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APPLE INC., A CALIFORNIA ) C-12-00630 LHK  
CORPORATION, )  
  
PLAINTIFF, ) SAN JOSE, CALIFORNIA  
  
VS. ) APRIL 1, 2014  
  
VOLUME 2  
  
SAMSUNG ELECTRONICS CO., LTD., )  
A KOREAN BUSINESS ENTITY; ) PAGES 268-497  
SAMSUNG ELECTRONICS AMERICA, )  
INC., A NEW YORK CORPORATION; )  
SAMSUNG TELECOMMUNICATIONS )  
AMERICA, LLC, A DELAWARE )  
LIMITED LIABILITY COMPANY, )  
  
DEFENDANTS. )

TRANSCRIPT OF PROCEEDINGS  
BEFORE THE HONORABLE LUCY H. KOH  
UNITED STATES DISTRICT JUDGE

APPEARANCES ON NEXT PAGE

OFFICIAL COURT REPORTERS: LEE-ANNE SHORTRIDGE, CSR, CRR  
CERTIFICATE NUMBER 9595  
IRENE RODRIGUEZ, CSR, CRR  
CERTIFICATE NUMBER 8074

PROCEEDINGS RECORDED BY MECHANICAL STENOGRAPHY  
TRANSCRIPT PRODUCED WITH COMPUTER

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A P P E A R A N C E S:

FOR PLAINTIFF MORRISON & FOERSTER  
APPLE: BY: HAROLD J. MCELHINNY  
RACHEL KREVANS  
425 MARKET STREET  
SAN FRANCISCO, CALIFORNIA 94105

WILMER, CUTLER, PICKERING,  
HALE AND DORR  
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BY: MARK D. SELWYN  
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FOR SAMSUNG: QUINN, EMANUEL, URQUHART & SULLIVAN  
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INDEX OF PROCEEDINGS

OPENING STATEMENT BY MR. MCELHINNY P. 298

OPENING STATEMENT BY MR. LEE P. 338

OPENING STATEMENT BY MR. QUINN P. 351

INDEX OF WITNESSESPLAINTIFF'S**PHILIP SCHILLER**

DIRECT EXAM BY MR. MCELHINNY P. 417

CROSS-EXAM BY MR. PRICE P. 475

INDEX OF EXHIBITSMARKEDADMITTEDPLAINTIFF'S

|      |     |
|------|-----|
| 118  | 428 |
| 135A | 429 |
| 180  | 432 |
| 1441 | 436 |
| 113A | 437 |
| 127A | 439 |
| 133  | 440 |
| 134  | 441 |
| 143  | 445 |
| 123  | 461 |

DEFENDANT'S

1 SAN JOSE, CALIFORNIA

APRIL 1, 2014

2 P R O C E E D I N G S

3 (JURY OUT AT 9:02 A.M.)

4 (JUROR ANDERSON PRESENT TELEPHONICALLY.)

5 JUROR ANDERSON: THIS IS LAURA ANDERSON.

6 THE CLERK: HI, MS. ANDERSON. WE'RE CALLING FROM THE  
7 COURTROOM.

8 JUROR ANDERSON: HELLO.

9 THE COURT: HI, MS. ANDERSON. TELL US WHAT IS  
10 HAPPENING TODAY.

11 JUROR ANDERSON: I'M NOT FEELING WELL. I WOKE UP  
12 EARLY THIS MORNING WITH VOMITING AND DIARRHEA, AND IT'S BEEN  
13 GOING ON THROUGHOUT THE MORNING. I HAVE BEEN RIDING FROM  
14 MONTEREY TO SAN JOSE. I'VE HAD TO PULL OVER MULTIPLE TIMES.

15 THE COURT: OKAY. ALL RIGHT. THEN I -- IS THERE ANY  
16 OBJECTION TO EXCUSING MS. LAURA ANDERSON FOR HARDSHIP?

17 MR. LEE: NONE FOR APPLE, YOUR HONOR.

18 MR. QUINN: NOR FOR SAMSUNG.

19 THE COURT: ALL RIGHT. THEN, MS. ANDERSON, THANK YOU  
20 VERY MUCH FOR YOUR SERVICE. WE HOPE THAT YOU RECOVER QUICKLY,  
21 AND YOU HAVE FULFILLED YOUR JURY DUTY.

22 JUROR ANDERSON: OKAY.

23 THE COURT: ALL RIGHT. THANK YOU.

24 JUROR ANDERSON: THANK YOU.

25 THE COURT: THANK YOU. FEEL BETTER.

1 JUROR ANDERSON: THANK YOU.

2 THE COURT: OKAY. THEN LET'S BRING IN MS. GALONJA,  
3 NUMBER 7.

4 (JUROR GALONJA PRESENT.)

5 THE COURT: MS. GALONJA, WELCOME. TAKE A SEAT  
6 ANYWHERE THAT'S COMFORTABLE FOR YOU. CAN YOU PLEASE TELL US  
7 WHAT ISSUE YOU'RE HAVING?

8 JUROR GALONJA: FIRST, I HAVE TO APOLOGIZE, AND THEN  
9 I HAVE TO TELL, IT'S AN HONOR FOR ME TO BE CHOSEN HERE.

10 BUT YESTERDAY WHEN I CAME HOME AND I LOOKED FOR ALL PROS  
11 AND, YOU KNOW, AGAINST THE DUTIES, DUTY, I REALIZED I HAVE SOME  
12 ISSUE TO ASK YOU TO DISMISS ME BECAUSE YESTERDAY YOU ASKED IF  
13 SOMEBODY HAD SOME HARDSHIP FOR THE, LIKE FINANCIAL SIDE, AND  
14 FIRST, I HAVE TO APOLOGIZE. I'M HERE 16 YEARS, BUT MY ENGLISH  
15 IS STILL LIMITED.

16 FIRST TIME I RAISED THE HAND AND THEN AFTER THAT, BECAUSE  
17 I REALLY DIDN'T THINK I WOULD BE CHOSEN 100 PERCENT.

18 AND THEN I SAID, OKAY, I'M NOT GOING TO TELL MY REASON  
19 BECAUSE IT'S FINANCIAL SIDE, HARD FOR ME.

20 BUT WHEN I CAME HOME AND I LOOK ON THAT, YOU KNOW, I'M  
21 WORKING TWO PART-TIME JOBS, NOT WELL PAID. MY HUSBAND DOESN'T  
22 WORK FOR FOUR YEARS. WE HAVE SOME FINANCIAL ISSUE.

23 AND I LOOK IN MY HANDBOOK, THE SCHOOL DISTRICT WHERE I'M  
24 WORKING, THEY PAY ME, LIKE I WOULD BE PAID \$40 PER DAY.

25 TODAY I LEARNED SOMETHING MORE, AND I WILL BE PAID ONE

1 MONTH LATER BECAUSE WE HAVE TO GIVE THE PROOF UNTIL THE 10TH OF  
2 THE MONTH, AND THEN WE'LL BE PAID, YOU KNOW, THE FOLLOWING  
3 MONTH.

4 IT MEANS ONE MONTH I WILL BE LATE, AND I LIVE PAY CHECK TO  
5 PAY CHECK.

6 THE COURT: OKAY.

7 JUROR GALONJA: THERE WILL BE ISSUE FOR ME  
8 FINANCIALLY.

9 AND THEN I'M NOT DRIVING. MY HUSBAND GIVE ME RIDE RIGHT  
10 NOW, AND HE WILL PICK ME UP.

11 THAT MEANS, YOU KNOW, I DON'T HAVE PROOF, I DON'T PARK THE  
12 CAR, I DON'T HAVE MILEAGE.

13 THE COURT: OH, WELL, YOUR HUSBAND WOULD STILL GET  
14 REIMBURSED FOR THE MILEAGE, EVEN IF YOU'RE NOT DRIVING, WHOEVER  
15 IS DRIVING WILL GET REIMBURSED FOR THE MILEAGE.

16 SO YOU WILL GET REIMBURSED FOR THAT. IF THAT WOULD MAKE A  
17 DIFFERENCE, YOU CAN LET ME KNOW.

18 JUROR GALONJA: AND THEN THIS MORNING I CALL MY  
19 JOB -- I WORK IN THE KITCHEN IN THE SCHOOL. YOU KNOW, THEY  
20 HAVE TO FIND SUBSTITUTE FOR ME. IT'S NOT EVERY TIME EASY TO  
21 FIND, AND THEY TOLD ME THAT.

22 YOU KNOW, I TOLD MAYBE WHOLE MONTH AND MY SUPERVISOR WAS,  
23 LIKE, OH, YOU KNOW, HOW WE CAN FIND FOR ONE-MONTH SUBSTITUTE?

24 THE COURT: UM-HUM.

25 JUROR GALONJA: AND IT'S ALSO ISSUE --

1 THE COURT: DO YOU THINK THAT MIGHT PUT YOUR JOB AT  
2 RISK?

3 JUROR GALONJA: YEAH, I THINK SO.

4 THE COURT: ALL RIGHT. IS THERE ANY OBJECTION TO  
5 EXCUSING MS. GALONJA FOR HARDSHIP?

6 MR. LEE: NOT FOR APPLE, YOUR HONOR.

7 MR. QUINN: NOT FOR SAMSUNG.

8 THE COURT: OKAY. MS. GALONJA, I WANTED TO THANK YOU  
9 SO MUCH FOR YOUR WILLINGNESS TO SERVE, AND I REALLY APPRECIATE  
10 THAT YOU TRIED TO SERVE ON THIS JURY AND YOU'VE FULFILLED YOUR  
11 DUTY. SO THANK YOU.

12 JUROR GALONJA: OKAY. I THANK YOU, EVERYBODY, FOR  
13 UNDERSTANDING.

14 THE COURT: CAN YOU GO TO THE SECOND FLOOR TO THE  
15 JURY ASSEMBLY ROOM, AND THEY CAN WORK OUT ALL OF YOUR  
16 PAPERWORK.

17 JUROR GALONJA: OKAY. THANK YOU.

18 THE COURT: THANK YOU.

19 THE CLERK: LET ME GO CHECK. I THINK WE'RE STILL  
20 MISSING ONE OR TWO.

21 THE COURT: WE'RE STILL MISSING A JUROR.

22 THE CLERK: WHEN SHE CAME OUT.

23 THE COURT: WE HAD BEEN MISSING ONE OR TWO JURORS,  
24 BUT LET'S SEE IF THEY'VE NOW ARRIVED.

25 WAIT ONE SECOND.



1 (PAUSE IN PROCEEDINGS.)

2 THE COURT: OKAY. THE DOOR IS CLOSED.

3 I ASSUME YOU STOOD UP FOR AN ISSUE?

4 MR. MCELHINNY: I DID. JUST TWO, ACTUALLY NOT EVEN  
5 ISSUES, WE'VE REACHED AGREEMENT ON SOMETHING.

6 THE COURT: OKAY. YOU'RE SETTling?

7 (LAUGHTER.)

8 MR. MCELHINNY: LET'S SEE. WHAT'S THE CALENDAR DATE?

9 MR. QUINN AND I WOULD JOINTLY MOVE THE COURT FOR AN ORDER  
10 EXCLUDING PERCIPIENT WITNESSES FROM THIS COURTROOM AND THE  
11 OVERFLOW COURTROOM DURING THE TRIAL.

12 THE COURT: THAT'S GRANTED.

13 MR. MCELHINNY: WITH EACH SIDE TO POLICE THEIR OWN  
14 WITNESSES.

15 THE COURT: THAT'S GRANTED. THAT MOTION IS GRANTED.

16 MR. MCELHINNY: AND, SECONDLY, WITH THE COURT'S  
17 PERMISSION, AS WE DID IN THE FIRST TRIAL, MR. LEE AND I WOULD  
18 LIKE TO SPLIT OUR OPENINGS WITHIN THE TWO CASES WITHIN THE TIME  
19 LIMIT THAT YOUR HONOR HAS SET.

20 THE COURT: THAT'S FINE.

21 (DISCUSSION OFF THE RECORD BETWEEN THE COURT AND THE  
22 CLERK.)

23 THE COURT: LET ME INFORM THE PARTIES THAT

24 MS. NGUYEN, WHO IS JUROR NUMBER 1, HAS JUST INFORMED

25 MS. PARKER BROWN THAT SHE IS GOING ON VACATION AS OF THE

1 EVENING OF WEDNESDAY, MARCH 7TH.

2 THE CLERK: MAY 7TH.

3 THE COURT: MAY 7TH. SO THAT WOULD BE, YOU KNOW,  
4 SHOULD BE A FULL WEEK OF JURY DELIBERATIONS.

5 I'M HOPING THAT THE JURY MAY BEGIN DELIBERATING ON  
6 TUESDAY, APRIL 29TH. CERTAINLY BY APRIL 30TH, WEDNESDAY.

7 SO I DON'T PERCEIVE THAT TO BE A PROBLEM. DO YOU WANT TO  
8 BE HEARD ON THAT? I'M NOT ANXIOUS TO LOSE ANOTHER JUROR RIGHT  
9 NOW.

10 MR. LEE: I'M ACTUALLY PETRIFIED ABOUT LOSING ANOTHER  
11 JUROR.

12 BUT I DON'T THINK IT'S A PROBLEM. WE SHOULD BE DONE BY  
13 THEN.

14 THE COURT: OKAY. MR. QUINN?

15 MR. QUINN: IT DOESN'T SEEM TO BE A PROBLEM, YOUR  
16 HONOR.

17 THE COURT: OKAY. SO WHEN SHE COMES OUT, I'M JUST  
18 GOING TO REASSURE HER THAT I'VE CONSULTED WITH YOU ALL, AND WE  
19 DON'T PERCEIVE THAT TO BE A PROBLEM.

20 OKAY. THEN I THINK WE HAVE EVERYONE NOW. IS THAT RIGHT,  
21 MS. PARKER BROWN?

22 THE CLERK: WE DO.

23 THE COURT: ALL RIGHT. THEN LET'S START.

24 THE CLERK: I'M GOING TO TAKE A SECOND AND TELL THEM  
25 THAT THEY DON'T HAVE TO SPREAD ALL THE WAY, THEY CAN --

1 THE COURT: SURE, THAT'S FINE.

2 I'M SORRY. HAVE YOU ALREADY DISTRIBUTED THE JURY BINDERS?

3 THE CLERK: NO.

4 (DISCUSSION OFF THE RECORD BETWEEN THE COURT AND THE  
5 CLERK.)

6 THE COURT: LET ME ASK THE PARTIES, WOULD YOU LIKE  
7 THEM TO GET THEIR JURY BINDERS NOW? I THINK IT MAKES SENSE  
8 BECAUSE THE JURY INSTRUCTIONS ARE IN THERE.

9 AND I THINK MR. SWARUUP CONFIRMED THAT THEY HAVE THE  
10 LATEST VERSIONS. OKAY. THANK YOU.

11 (JURY IN AT 9:12 A.M.)

12 THE COURT: ALL RIGHT. WELCOME. PLEASE TAKE A SEAT.  
13 WELCOME AND GOOD MORNING.

14 UNFORTUNATELY, MS. ANDERSON WAS VERY, VERY ILL, HAS HAD A  
15 LOT OF VOMITING. SO SHE HAD TO BE EXCUSED.

16 AND MS. GALONJA AS WELL HAD SOME PRETTY SEVERE HARDSHIPS.  
17 SO SHE HAD TO BE EXCUSED.

18 SO I HAVE EIGHT OF YOU LEFT AND YOU ARE EACH PRECIOUS, AND  
19 I AM GOING TO BE PUTTING IMMUNE ENHANCING POWDERS AND VITAMIN C  
20 DRINKS IN THE JURY ROOM. I'M GOING TO ASK YOU TO EACH DRINK  
21 ONE OR TWO EVERY DAY. OKAY.

22 NO BUNGEE JUMPING, NOTHING CRAZY IN THE NEXT MONTH, REALLY  
23 CAUTIOUS, BECAUSE I NEED TO HAVE ALL OF YOU REMAIN ON THE JURY.  
24 OKAY?

25 ALL RIGHT.

1 I'M NOW GOING TO READ TO YOU THE PRELIMINARY JURY  
2 INSTRUCTIONS.

3 AND, MS. NGUYEN, I UNDERSTAND THAT YOU HAVE A VACATION  
4 PLANNED THE EVENING OF MAY 7TH, WEDNESDAY. I THINK THAT SHOULD  
5 BE FINE.

6 JUROR NGUYEN: OKAY.

7 THE COURT: WE DO HOPE THAT THE JURY WILL BEGIN  
8 DELIBERATING SOME TIME ON EITHER TUESDAY, APRIL 29TH, OR  
9 WEDNESDAY, APRIL 30TH. SO THAT SHOULD BE SUFFICIENT TIME.

10 BUT IF IT'S NOT, THEN WE CAN ALWAYS DISCUSS AT THAT POINT  
11 HOW TO PROCEED.

12 OKAY. YOU NOW HAVE JURY BINDERS WHICH YOU CAN LOOK  
13 THROUGH THAT HAVE HELPFUL INFORMATION ABOUT THE CASE.

14 I WANT TO POINT YOU TO THE PRELIMINARY JURY INSTRUCTIONS  
15 WHICH, EVEN THOUGH YOU HAVE A HARD COPY, I AM REQUIRED TO READ  
16 THEM TO YOU.

17 SO IF YOU WOULD PLEASE TURN TO YOUR PRELIMINARY JURY  
18 INSTRUCTIONS IN YOUR BINDERS. SO IT'S THE THIRD BIG TAB. IS  
19 EVERYONE THERE? ALL RIGHT. THANK YOU.

20 ALL RIGHT. DUTY OF THE JURY.

21 LADIES AND GENTLEMEN, YOU ARE NOW THE JURY IN THIS CASE.  
22 IT IS MY DUTY TO INSTRUCT YOU ON THE LAW.

23 THESE INSTRUCTIONS ARE PRELIMINARY INSTRUCTIONS TO HELP  
24 YOU UNDERSTAND THE PRINCIPLES THAT APPLY TO CIVIL TRIALS AND TO  
25 HELP YOU UNDERSTAND THE EVIDENCE AS YOU LISTEN TO IT.

1           YOU WILL BE ALLOWED TO KEEP THIS SET THROUGHOUT THE TRIAL  
2           TO WHICH TO REFER. THIS SET OF INSTRUCTIONS IS NOT TO BE TAKEN  
3           HOME.

4           ACTUALLY, YOUR JURY BINDERS ARE ALSO NOT TO BE TAKEN HOME.  
5           PLEASE LEAVE THEM IN THE JURY ROOM DURING BREAKS AND IN THE  
6           EVENINGS. THANK YOU.

7           THIS SET OF INSTRUCTIONS MUST REMAIN IN THE JURY ROOM WHEN  
8           YOU LEAVE IN THE EVENINGS. AT THE END OF THE TRIAL, I WILL  
9           GIVE YOU A FINAL SET OF INSTRUCTIONS. IT IS THE FINAL SET OF  
10          INSTRUCTIONS WHICH WILL GOVERN YOUR DELIBERATIONS.

11          YOU MUST NOT INFER FROM THESE INSTRUCTIONS OR FROM  
12          ANYTHING I MAY SAY OR DO AS INDICATING THAT I HAVE AN OPINION  
13          REGARDING THE EVIDENCE OR WHAT YOUR VERDICT SHOULD BE.

14          IT IS YOUR DUTY TO FIND THE FACTS FROM ALL THE EVIDENCE IN  
15          THE CASE. TO THOSE FACTS YOU WILL APPLY THE LAW AS I GIVE IT  
16          TO YOU.

17          YOU MUST FOLLOW THE LAW AS I GIVE IT TO YOU WHETHER YOU  
18          AGREE WITH IT OR NOT.

19          DO NOT LET PERSONAL LIKES OR DISLIKES, OPINIONS,  
20          PREJUDICES, BIAS OR SYMPATHY INFLUENCE YOUR DECISION.

21          BIAS INCLUDES BIAS FOR OR AGAINST ANY PARTY OR ANY WITNESS  
22          BASED UPON NATIONALITY, RACE OR ETHNICITY.

23          THAT MEANS THAT YOU MUST DECIDE THE CASE SOLELY ON THE  
24          EVIDENCE BEFORE YOU. YOU WILL RECALL THAT YOU TOOK AN OATH TO  
25          DO SO.

1 IN FOLLOWING MY INSTRUCTIONS, YOU MUST FOLLOW ALL OF THEM  
2 AND NOT SINGLE OUT SOME AND IGNORE OTHERS. THEY ARE ALL  
3 IMPORTANT.

4 WHAT IS EVIDENCE?

5 THE EVIDENCE YOU ARE TO CONSIDER IN DECIDING WHAT THE  
6 FACTS ARE CONSISTS OF:

- 7 1. THE SWORN TESTIMONY OF ANY WITNESS;  
8 2. THE EXHIBITS WHICH ARE RECEIVED INTO EVIDENCE; AND,  
9 3. ANY FACTS TO WHICH THE LAWYERS HAVE AGREED.

10 WHAT IS NOT EVIDENCE?

11 IN REACHING YOUR VERDICT, YOU MAY CONSIDER ONLY THE  
12 TESTIMONY AND EVIDENCE RECEIVED INTO EVIDENCE.

13 CERTAIN THINGS ARE NOT EVIDENCE, AND YOU MAY NOT CONSIDER  
14 THEM IN DECIDING WHAT THE FACTS ARE. I WILL LIST THEM FOR YOU.

15 NUMBER 1. ARGUMENTS AND STATEMENTS BY LAWYERS ARE NOT  
16 EVIDENCE. THE LAWYERS ARE NOT WITNESSES. WHAT THEY WILL SAY  
17 IN THEIR OPENING STATEMENTS, WILL SAY IN THEIR CLOSING  
18 ARGUMENTS, AND AT OTHER TIMES IS INTENDED TO HELP YOU INTERPRET  
19 THE EVIDENCE, BUT IT IS NOT EVIDENCE.

20 IF THE FACTS AS YOU REMEMBER THEM DIFFER FROM THE WAY THE  
21 LAWYERS HAVE STATED THEM, YOUR MEMORY OF THEM CONTROLS.

22 NUMBER 2. QUESTIONS AND OBJECTIONS BY LAWYERS ARE NOT  
23 EVIDENCE. ATTORNEYS HAVE A DUTY TO THEIR CLIENTS TO OBJECT  
24 WHEN THEY BELIEVE A QUESTION IS IMPROPER UNDER THE RULES OF  
25 EVIDENCE.

1           YOU SHOULD NOT BE INFLUENCED BY THE OBJECTION OR BY THE  
2           COURT'S RULING ON IT.

3           NUMBER 3. TESTIMONY THAT HAS BEEN EXCLUDED OR STRICKEN OR  
4           THAT YOU HAVE BEEN INSTRUCTED TO DISREGARD IS NOT EVIDENCE AND  
5           MUST NOT BY CONSIDERED.

6           IN ADDITION, SOMETIMES TESTIMONY AND EXHIBITS ARE RECEIVED  
7           ONLY FOR A LIMITED PURPOSE. WHEN I GIVE A LIMITING  
8           INSTRUCTION, YOU MUST FOLLOW IT.

9           NUMBER 4. ANYTHING YOU MAY HAVE SEEN OR HEARD WHEN THE  
10          COURT WAS NOT IN SESSION IS NOT EVIDENCE. YOU ARE TO DECIDE  
11          THE CASE SOLELY ON THE EVIDENCE RECEIVED AT THE TRIAL.

12          EVIDENCE FOR A LIMITED PURPOSE.

13          SOME EVIDENCE MAY BE ADMITTED FOR A LIMITED PURPOSE ONLY.

14          WHEN I INSTRUCT YOU THAT AN ITEM OF EVIDENCE HAS BEEN  
15          ADMITTED FOR A LIMITED PURPOSE, YOU MUST CONSIDER IT ONLY FOR  
16          THAT LIMITED PURPOSE AND FOR NO OTHER.

17          DIRECT OR CIRCUMSTANTIAL EVIDENCE.

18          EVIDENCE MAY BE DIRECT OR CIRCUMSTANTIAL. DIRECT EVIDENCE  
19          IS DIRECT PROOF OF A FACT, SUCH AS TESTIMONY BY A WITNESS ABOUT  
20          WHAT THAT WITNESS PERSONALLY SAW OR HEARD OR DID.

21          CIRCUMSTANTIAL EVIDENCE IS PROOF OF ONE OR MORE FACTS FROM  
22          WHICH YOU COULD FIND ANOTHER FACT.

23          YOU SHOULD CONSIDER BOTH KINDS OF EVIDENCE. THE LAW MAKES  
24          NO DISTINCTION BETWEEN THE WEIGHT TO BE GIVEN TO EITHER DIRECT  
25          OR CIRCUMSTANTIAL EVIDENCE. IT IS FOR YOU TO DECIDE HOW MUCH

1 WEIGHT TO GIVE TO ANY EVIDENCE.

2 NUMBER 6. RULING ON OBJECTIONS.

3 THERE ARE RULES OF EVIDENCE THAT CONTROL WHAT CAN BE  
4 RECEIVED INTO EVIDENCE. WHEN A LAWYER ASKS A QUESTION OR  
5 OFFERS AN EXHIBIT INTO EVIDENCE AND A LAWYER ON THE OTHER SIDE  
6 THINKS THAT IT IS NOT PERMITTED BY THE RULES OF EVIDENCE, THAT  
7 LAWYER MAY OBJECT.

8 IF I OVERRULE THE OBJECTION, THE QUESTION MAY BE ANSWERED  
9 OR THE EXHIBIT RECEIVED.

10 IF I SUSTAIN THE OBJECTION, THE QUESTION CANNOT BE  
11 ANSWERED AND THE EXHIBIT CANNOT BE RECEIVED.

12 WHENEVER I SUSTAIN AN OBJECTION TO A QUESTION, YOU MUST  
13 IGNORE THE QUESTION AND MUST NOT GUESS WHAT THE ANSWER MIGHT  
14 HAVE BEEN.

15 SOMETIMES I MAY ORDER THAT EVIDENCE BE STRICKEN FROM THE  
16 RECORD AND THAT YOU DISREGARD OR IGNORE THE EVIDENCE. THAT  
17 MEANS THAT WHEN YOU ARE DECIDING THE CASE, YOU MUST NOT  
18 CONSIDER THE EVIDENCE THAT I TOLD YOU TO DISREGARD.

19 CREDIBILITY OF WITNESSES.

20 IN DECIDING THE FACTS IN THIS CASE, YOU MAY HAVE TO DECIDE  
21 WHICH TESTIMONY TO BELIEVE AND WHICH TESTIMONY NOT TO BELIEVE.  
22 YOU MAY BELIEVE EVERYTHING A WITNESS SAYS, OR PART OF IT, OR  
23 NONE OF IT.

24 PROOF OF A FACT DOES NOT NECESSARILY DEPEND ON THE NUMBER  
25 OF WITNESSES WHO TESTIFY ABOUT IT.



1           IN CONSIDERING THE TESTIMONY OF ANY WITNESS, YOU MAY TAKE  
2 INTO ACCOUNT:

3           NUMBER 1. THE OPPORTUNITY AND ABILITY OF THE WITNESS TO  
4 SEE OR HEAR OR KNOW THE THINGS TESTIFIED TO;

5           NUMBER 2. THE WITNESS'S MEMORY;

6           NUMBER 3. THE WITNESS'S MANNER WHILE TESTIFYING;

7           NUMBER 4. THE WITNESS'S INTEREST IN THE OUTCOME OF THE  
8 CASE AND ANY BIAS OR PREJUDICE;

9           NUMBER 5. WHETHER OTHER EVIDENCE CONTRADICTED THE  
10 WITNESS'S TESTIMONY;

11           NUMBER 6. THE REASONABLENESS OF THE WITNESS'S TESTIMONY  
12 IN LIGHT OF ALL THE EVIDENCE; AND,

13           NUMBER 7. ANY OTHER FACTORS THAT BEAR ON BELIEVABILITY.

14           THE WEIGHT OF THE EVIDENCE AS TO A FACT DOES NOT  
15 NECESSARILY DEPEND ON THE NUMBER OF WITNESSES WHO TESTIFY ABOUT  
16 IT.

17           IMPEACHMENT EVIDENCE -- WITNESS.

18           THE EVIDENCE THAT A WITNESS LIED UNDER OATH OR GAVE  
19 DIFFERENT TESTIMONY ON A PRIOR OCCASION MAY BE CONSIDERED,  
20 ALONG WITH ALL OTHER EVIDENCE, IN DECIDING WHETHER OR NOT TO  
21 BELIEVE A WITNESS AND HOW MUCH WEIGHT TO GIVE THE TESTIMONY OF  
22 THE WITNESS AND FOR NO OTHER PURPOSE.

23           NUMBER 9. CONDUCT OF THE JURY.

24           I WILL NOW SAY A FEW WORDS ABOUT YOUR CONDUCT AS JURORS.

25           FIRST, KEEP AN OPEN MIND THROUGHOUT THE TRIAL, AND DO NOT

1 DECIDE WHAT THE VERDICT SHOULD BE UNTIL YOU AND YOUR FELLOW  
2 JURORS HAVE COMPLETED YOUR DELIBERATIONS AT THE END OF THE  
3 CASE.

4 SECOND, BECAUSE YOU MUST DECIDE THIS CASE BASED ONLY ON  
5 THE EVIDENCE RECEIVED IN THE CASE AND ON MY INSTRUCTIONS AS TO  
6 THE LAW THAT APPLIES, YOU MUST NOT BE EXPOSED TO ANY OTHER  
7 INFORMATION ABOUT THE CASE OR TO THE ISSUES IT INVOLVES DURING  
8 THE COURSE OF YOUR JURY DUTY.

9 THUS, UNTIL THE END OF THE CASE, OR UNLESS I TELL YOU  
10 OTHERWISE, DO NOT COMMUNICATE WITH ANYONE IN ANY WAY, AND DO  
11 NOT LET ANYONE ELSE COMMUNICATE WITH YOU IN ANY WAY, ABOUT THE  
12 MERITS OF THE CASE OR ANYTHING TO DO WITH IT.

13 THIS INCLUDES DISCUSSING THE CASE IN PERSON, IN WRITING,  
14 BY PHONE OR ELECTRONIC MEANS VIA E-MAIL, TEXT MESSAGING OR ANY  
15 INTERNET CHAT ROOM, BLOG, WEBSITE OR ANY OTHER FEATURE.

16 THIS APPLIES TO COMMUNICATING WITH YOUR FELLOW JURORS  
17 UNTIL I GIVE YOU THE CASE FOR DELIBERATION, AND IT APPLIES TO  
18 COMMUNICATING WITH EVERYONE ELSE, INCLUDING YOUR FAMILY  
19 MEMBERS, YOUR EMPLOYER, AND THE PEOPLE INVOLVED IN THE TRIAL,  
20 ALTHOUGH YOU MAY NOTIFY YOUR FAMILY AND YOUR EMPLOYER THAT YOU  
21 HAVE BEEN SEATED AS A JUROR IN THIS CASE.

22 BUT IF YOU ARE ASKED OR APPROACHED IN ANY WAY ABOUT YOUR  
23 JURY SERVICE OR ANYTHING ABOUT THIS CASE, YOU MUST RESPOND THAT  
24 YOU HAVE BEEN ORDERED NOT TO DISCUSS THE MATTER AND TO REPORT  
25 THE CONTACT TO THE COURT.

1 BECAUSE YOU WILL RECEIVE ALL OF THE EVIDENCE AND LEGAL  
2 INSTRUCTION YOU PROPERLY MAY CONSIDER TO RETURN A VERDICT: DO  
3 NOT READ, WATCH OR LISTEN TO ANY NEWS OR MEDIA ACCOUNTS OR  
4 COMMENTARY ABOUT THE CASE OR ANYTHING TO DO WITH IT; DO NOT DO  
5 ANY RESEARCH, SUCH AS CONSULTING DICTIONARIES, SEARCHING THE  
6 INTERNET OR USING OTHER REFERENCE MATERIALS; AND DO NOT MAKE  
7 ANY INVESTIGATION OR IN ANY OTHER WAY TRY TO LEARN ABOUT THE  
8 CASE ON YOUR OWN.

9 THE LAW REQUIRES THESE RESTRICTIONS TO ENSURE THE PARTIES  
10 HAVE A FAIR TRIAL BASED ON THE SAME EVIDENCE THAT EACH PARTY  
11 HAS HAD AN OPPORTUNITY TO ADDRESS. A JUROR WHO VIOLATES THESE  
12 RESTRICTIONS JEOPARDIZES THE FAIRNESS OF THESE PROCEEDINGS AND  
13 A MISTRIAL COULD RESULT THAT WOULD REQUIRE THE ENTIRE TRIAL  
14 PROCESS TO START OVER.

15 IF ANY JUROR IS EXPOSED TO ANY OUTSIDE INFORMATION, PLEASE  
16 NOTIFY THE COURT IMMEDIATELY.

17 NUMBER 10.

18 DURING DELIBERATIONS YOU WILL HAVE TO MAKE YOUR DECISION  
19 BASED ON WHAT YOU RECALL OF THE EVIDENCE. YOU WILL NOT HAVE A  
20 TRANSCRIPT OF THE TRIAL. I URGE YOU TO PAY CLOSE ATTENTION TO  
21 THE TESTIMONY AS IT IS GIVEN.

22 IF AT ANY TIME YOU CANNOT HEAR OR SEE THE TESTIMONY,  
23 EVIDENCE, QUESTIONS OR ARGUMENTS, LET ME KNOW SO THAT I CAN  
24 CORRECT THE PROBLEM.

25 IF YOU WISH, YOU MAY TAKE NOTES TO HELP YOU REMEMBER THE

1 EVIDENCE. IF YOU DO TAKE NOTES, PLEASE KEEP THEM TO YOURSELF  
2 UNTIL YOU AND YOUR FELLOW JURORS GO TO THE JURY ROOM TO DECIDE  
3 THE CASE.

4 DO NOT LET NOTE-TAKING DISTRACT YOU.

5 WHEN YOU LEAVE, YOUR NOTES SHOULD BE LEFT IN THE JURY  
6 ROOM. NO ONE WILL READ YOUR NOTES. THEY WILL BE DESTROYED AT  
7 THE CONCLUSION OF THE CASE.

8 WHETHER OR NOT YOU TAKE NOTES, YOU SHOULD RELY ON YOUR OWN  
9 MEMORY OF THE EVIDENCE. NOTES ARE ONLY TO ASSIST YOUR MEMORY.  
10 YOU SHOULD NOT BE OVERLY INFLUENCED BY YOUR NOTES OR THOSE OF  
11 YOUR FELLOW JURORS.

12 NUMBER 11.

13 THE PARTIES HAVE AGREED TO CERTAIN FACTS THAT WILL BE READ  
14 TO YOU. YOU SHOULD THEREFORE TREAT THESE FACTS AS HAVING BEEN  
15 PROVED.

16 NUMBER 12.

17 A DEPOSITION IS THE SWORN TESTIMONY OF A WITNESS TAKEN  
18 BEFORE TRIAL. THE WITNESS IS PLACED UNDER OATH TO TELL THE  
19 TRUTH, AND LAWYERS FOR EACH PARTY MAY ASK QUESTIONS. THE  
20 QUESTIONS AND ANSWERS ARE RECORDED.

21 YOU SHOULD CONSIDER DEPOSITION TESTIMONY, PRESENTED TO YOU  
22 IN COURT IN LIEU OF LIVE TESTIMONY, INsofar AS POSSIBLE, IN THE  
23 SAME WAY AS IF THE WITNESS HAD BEEN PRESENT TO TESTIFY.

24 NUMBER 13.

25 EVIDENCE MAY BE PRESENTED TO YOU IN THE FORM OF ANSWERS OF

ONE OF THE PARTIES TO WRITTEN INTERROGATORIES SUBMITTED BY THE OTHER SIDE. THESE ANSWERS WERE GIVEN IN WRITING AND UNDER OATH BEFORE THE ACTUAL TRIAL IN RESPONSE TO QUESTIONS THAT WERE SUBMITTED IN WRITING UNDER ESTABLISHED COURT PROCEDURES.

YOU SHOULD CONSIDER THE ANSWERS, INsofar AS POSSIBLE, IN THE SAME WAY AS IF THEY WERE MADE FROM THE WITNESS STAND.

14.

SOME WITNESSES, BECAUSE OF EDUCATION OR EXPERIENCE, ARE PERMITTED TO STATE OPINIONS AND THE REASONS FOR THOSE OPINIONS.

OPINION TESTIMONY SHOULD BE JUDGED JUST LIKE ANY OTHER TESTIMONY. YOU MAY ACCEPT IT OR REJECT, AND GIVE IT AS MUCH WEIGHT AS YOU THINK IT DESERVES, CONSIDERING THE WITNESS'S EDUCATION AND EXPERIENCE, THE REASONS GIVEN FOR THE OPINION, AND ALL THE OTHER EVIDENCE IN THE CASE.

15.

LANGUAGES OTHER THAN ENGLISH MAY BE USED DURING THIS TRIAL.

WITNESSES WHO DO NOT SPEAK ENGLISH OR ARE MORE PROFICIENT IN ANOTHER LANGUAGE TESTIFY THROUGH AN OFFICIAL COURT INTERPRETER. ALTHOUGH SOME OF YOU MAY KNOW KOREAN, IT IS IMPORTANT THAT ALL JURORS CONSIDER THE SAME EVIDENCE. THEREFORE, YOU MUST ACCEPT THE INTERPRETER'S TRANSLATION OF THE WITNESS'S TESTIMONY. YOU MUST DISREGARD ANY DIFFERENT MEANING.

16.

YOU MUST NOT MAKE ANY ASSUMPTION ABOUT A WITNESS OR A

1 PARTY BASED SOLELY UPON THE USE OF AN INTERPRETER TO ASSIST  
2 THAT WITNESS OR PARTY.

3 17.

4 FROM TIME TO TIME DURING THE TRIAL, IT MAY BECOME  
5 NECESSARY FOR ME TO TALK WITH THE ATTORNEYS OUT OF THE HEARING  
6 OF THE JURY, EITHER BY HAVING A CONFERENCE AT THE BENCH WHEN  
7 THE JURY IS PRESENT IN THE COURTROOM, OR BY CALLING A RECESS.

8 PLEASE UNDERSTAND THAT WHILE YOU ARE WAITING, WE ARE  
9 WORKING. THE PURPOSE OF THESE CONFERENCES IS NOT TO KEEP  
10 RELEVANT INFORMATION FROM YOU BUT TO DECIDE HOW CERTAIN  
11 EVIDENCE IS TO BE TREATED UNDER THE RULES OF EVIDENCE AND TO  
12 AVOID CONFUSE AND ERROR.

13 OF COURSE, WE WILL DO WHAT WE CAN TO KEEP THE NUMBER AND  
14 LENGTH OF THESE CONFERENCES TO A MINIMUM.

15 I MAY NOT ALWAYS GRANT AN ATTORNEY'S REQUEST FOR A  
16 CONFERENCE. DO NOT CONSIDER MY GRANTING OR DENYING A REQUEST  
17 FOR A CONFERENCE AS ANY INDICATION OF MY OPINION OF THE CASE OR  
18 OF WHAT YOUR VERDICT SHOULD BE.

19 18.

20 THIS CASE INVOLVES DISPUTES RELATING TO UNITED STATES  
21 PATENTS. BEFORE SUMMARIZING THE POSITIONS OF THE PARTIES AND  
22 THE LEGAL ISSUES INVOLVED IN THE DISPUTE, LET ME TAKE A MOMENT  
23 TO EXPLAIN WHAT PATENTS ARE AND HOW THEY ARE OBTAINED.

24 PATENTS ARE GRANTED BY THE UNITED STATES PATENT AND  
25 TRADEMARK OFFICE (SOMETIMES CALLED "THE PTO.") IN GENERAL

1 TERMS, A PATENT PROTECTS THE WAY AN ARTICLE IS USED OR WORKS.  
2 IT ALSO PROTECTS A METHOD OR PROCESS OF MAKING OR DOING  
3 SOMETHING.

4 A VALID UNITED STATES PATENT GIVES THE PATENT OWNER THE  
5 RIGHT TO PREVENT OTHERS FROM MAKING, USING, OFFERING TO SELL OR  
6 SELLING THE PATENTED INVENTION WITHIN THE UNITED STATES, OR  
7 FROM IMPORTING IT INTO THE UNITED STATES, DURING THE TERM OF  
8 THE PATENT WITHOUT THE PATENT HOLDER'S PERMISSION.

9 A VIOLATION OF THE PATENT OWNER'S RIGHTS IS CALLED  
10 INFRINGEMENT. THE PATENT OWNER MAY TRY TO ENFORCE A PATENT  
11 AGAINST PERSONS BELIEVED TO BE INFRINGERS BY A LAWSUIT FILED IN  
12 FEDERAL COURT.

13 A PATENT INCLUDES WHAT IS CALLED A "SPECIFICATION." THE  
14 SPECIFICATION MUST CONTAIN A WRITTEN DESCRIPTION OF THE CLAIMED  
15 INVENTION TELLING WHAT THE INVENTION IS, HOW IT WORKS, HOW TO  
16 MAKE IT, AND HOW TO USE IT SO OTHERS SKILLED IN THE FIELD WILL  
17 KNOW HOW TO MAKE OR USE IT.

18 THE SPECIFICATION CONCLUDES WITH ONE OR MORE NUMBERED  
19 SENTENCES. THESE ARE THE PATENT "CLAIMS ." WHEN THE PATENT IS  
20 EVENTUALLY GRANTED BY THE PTO, THE CLAIMS DEFINE THE BOUNDARIES  
21 OF ITS PROTECTION AND GIVE NOTICE TO THE PUBLIC OF THOSE  
22 BOUNDARIES.

23 THE PROCESS OF OBTAINING A PATENT IS CALLED PATENT  
24 PROSECUTION. TO OBTAIN A PATENT, ONE MUST FILE AN APPLICATION  
25 WITH THE PTO. THE PTO IS AN AGENCY OF THE FEDERAL GOVERNMENT

1 AND EMPLOYS TRAINED EXAMINERS WHO REVIEW APPLICATIONS FOR  
2 PATENTS.

3 AFTER THE APPLICANT FILES THE APPLICATION, A PTO PATENT  
4 EXAMINER REVIEWS THE PATENT APPLICATION TO DETERMINE WHETHER  
5 THE CLAIMS ARE PATENTABLE AND WHETHER THE SPECIFICATION  
6 ADEQUATELY DESCRIBES THE INVENTION CLAIMED.

7 IN EXAMINING A PATENT APPLICATION, THE PATENT EXAMINER  
8 REVIEWS RECORDS AVAILABLE TO THE PTO FOR WHAT IS REFERRED TO AS  
9 "PRIOR ART."

10 THE EXAMINER ALSO WILL REVIEW PRIOR ART IF IT IS SUBMITTED  
11 TO THE PTO BY AN APPLICANT.

12 PRIOR ART IS DEFINED BY LAW AND I WILL GIVE YOU, AT A  
13 LATER TIME, SPECIFIC INSTRUCTIONS AS TO WHAT CONSTITUTES PRIOR  
14 ART.

15 HOWEVER, IN GENERAL, PRIOR ART INCLUDES THINGS THAT EXISTS  
16 BEFORE THE CLAIMED INVENTION, THAT WERE PUBLICLY KNOWN OR USED  
17 IN A PUBLICLY ACCESSIBLE WAY IN THIS COUNTRY, OR THAT WERE  
18 PATENTED OR DESCRIBED IN A PUBLICATION IN ANY COUNTRY.

19 THE EXAMINER CONSIDERS, AMONG OTHER THINGS, WHETHER EACH  
20 CLAIM DEFINES AN INVENTION THAT IS NEW, USEFUL, AND NOT OBVIOUS  
21 IN VIEW OF THE PRIOR ART. A PATENT LISTS THE PRIOR ART THAT  
22 THE EXAMINER CONSIDERED; THIS LIST IS CALLED THE "CITED  
23 PREFERENCES."

24 AFTER THE PRIOR ART SEARCH AND EXAMINATION OF THE  
25 APPLICATION, THE PATENT EXAMINER THEN INFORMS THE APPLICANT IN



1 WRITING WHAT THE EXAMINER HAS FOUND AND WHETHER ANY CLAIM IS  
2 PATENTABLE, AND THUS WILL BE "ALLOWED."

3 THIS WRITING FROM THE PATENT EXAMINER IS CALLED AN "OFFICE  
4 ACTION."

5 IF THE EXAMINER REJECTS THE CLAIMS, THE APPLICANT THEN  
6 RESPONDS AND SOMETIMES CHANGES THE CLAIMS OR SUBMITS NEW  
7 CLAIMS.

8 THIS PROCESS, WHICH TAKES PLACE ONLY BETWEEN THE EXAMINER  
9 AND THE PATENT APPLICANT, MAY GO BACK AND FORTH FOR SOME TIME  
10 UNTIL THE EXAMINER IS SATISFIED THAT THE APPLICATION AND CLAIMS  
11 MEET THE REQUIREMENTS FOR A PATENT.

12 THE PAPERS GENERATED DURING THIS TIME OF COMMUNICATING  
13 BACK AND FORTH BETWEEN THE PATENT EXAMINER AND THE APPLICANT  
14 MAKE UP WHAT IS CALLED THE "PROSECUTION HISTORY." ALL OF THIS  
15 MATERIAL BECOMES AVAILABLE TO THE PUBLIC NO LATER THAN THE DATE  
16 WHEN THE PATENT ISSUES.

17 THE FACT THAT THE PTO GRANTS A PATENT DOES NOT NECESSARILY  
18 MEAN THAT ANY INVENTION CLAIMED IN THE PATENT, IN FACT,  
19 DESERVES THE PROTECTION OF A PATENT. FOR EXAMPLE, THE PTO MAY  
20 NOT HAVE HAD AVAILABLE TO IT ALL THE INFORMATION THAT WILL BE  
21 PRESENTED TO YOU.

22 A PERSON ACCUSED OF INFRINGEMENT HAS THE RIGHT TO ARGUE  
23 HERE IN FEDERAL COURT THAT A CLAIMED INVENTION IN THE PATENT IS  
24 INVALID BECAUSE IT DOES NOT MEET THE REQUIREMENTS FOR A PATENT.

25 19.

1           THERE ARE SEVEN PATENTS ASSERTED IN THIS CASE.

2           APPLE ACCUSES SAMSUNG OF INFRINGING UNITED STATES PATENT  
3           NUMBERS 5,946,647; 6,847,959; 7,761,414; 8,046,172.

4           PATENTS ARE OFTEN REFERRED TO BY THEIR LAST THREE DIGITS,  
5           SO APPLE'S PATENTS MAY BE REFERRED TO IN SHORTHAND AS THE '647,  
6           '959, '414, '721, AND '172 PATENTS.

7           SAMSUNG ACCUSES APPLE OF INFRINGING UNITED STATES PATENT  
8           NUMBERS 6,226,445 AND 5,579,239.

9           SAMSUNG'S PATENTS MAY BE REFERRED TO IN SHORT HAPPENED AS  
10          THE 449 AND 239 PATENTS.

11          TO HELP YOU FOLLOW THE EVIDENCE, I WILL NOW GIVE YOU A  
12          SUMMARY OF THE POSITIONS OF THE PARTIES WITH RESPECT TO THE  
13          PATENT CLAIMS.

14          THE PARTIES IN THIS CASE ARE APPLE, INCORPORATED, WHICH WE  
15          WILL REFER TO AS "APPLE" AND SAMSUNG ELECTRONICS COMPANY  
16          LIMITED, SAMSUNG ELECTRONICS AMERICA, INCORPORATED, AND SAMSUNG  
17          TELECOMMUNICATIONS AMERICA LIMITED LIABILITY CORPORATION, WHICH  
18          I WILL REFER TO COLLECTIVELY AS "SAMSUNG" UNLESS I THINK IT IS  
19          IMPORTANT TO DISTINGUISH BETWEEN THESE ENTITIES FOR THE  
20          PURPOSES OF A SPECIFIC INSTRUCTION.

21          YOU MUST DECIDE THE CASE AS TO SAMSUNG ELECTRONICS  
22          COMPANY, SAMSUNG ELECTRONICS AMERICA, AND SAMSUNG  
23          TELECOMMUNICATIONS AMERICA SEPARATELY REGARDLESS OF WHETHER I  
24          REFER TO THEM COLLECTIVELY AS "SAMSUNG" OR INDIVIDUALLY.

25          THE CASE INVOLVES FIVE UNITED STATES PATENTS OWNED BY

1 APPLE AND TWO UNITED STATES PATENTS OWNED BY SAMSUNG.

2 APPLE FILED THIS LAWSUIT AGAINST SAMSUNG SEEKING MONEY  
3 DAMAGES FROM SAMSUNG FOR ALLEGEDLY INFRINGING THE '647, '959,  
4 '414, '721, AND '172 PATENTS BY MAKING, IMPORTING, USING,  
5 SELLING, AND/OR OFFERING FOR SALE THE TABLET AND SMARTPHONE  
6 PRODUCTS THAT APPLE ARGUES ARE COVERED CLAIM 9 OF THE '647  
7 PATENT, CLAIM 25 OF THE '959 PATENT, CLAIM 20 OF THE '414  
8 PATENT, CLAIM 8 OF THE '721 PATENT, AND CLAIM 18 OF THE '172  
9 PATENT.

10 APPLE ALSO ARGUES THAT SAMSUNG ELECTRONICS COMPANY  
11 ACTIVELY INDUCED SAMSUNG ELECTRONICS AMERICA, INC. AND SAMSUNG  
12 TELECOMMUNICATIONS AMERICA LLC TO INFRINGE.

13 APPLE CONTENDS THAT SAMSUNG'S INFRINGEMENT HAS BEEN  
14 WILLFUL.

15 SAMSUNG DENIES THAT IT HAS INFRINGED THE ASSERTED CLAIMS  
16 OF THE '647, '959, '414, AND '721 PATENTS AND ARGUES THAT, IN  
17 ADDITION, THE ASSERTED CLAIMS ARE INVALID. INVALIDITY IS A  
18 DEFENSE TO INFRINGEMENT.

19 YOUR DUTY FOR APPLE'S '172 PATENT IS DIFFERENT FROM THE  
20 OTHER PATENTS. THE COURT HAS ALREADY FOUND THAT THE ADMIRE,  
21 GALAXY NEXUS, GALAXY NOTE (EXCLUDING ONE RELEASE), GALAXY SII  
22 (EXCLUDING ONE RELEASE), GALAXY SII EPIC 4G TOUCH (EXCLUDING  
23 ONE RELEASE), GALAXY SII SKYROCKET (EXCLUDING ONE RELEASE), AND  
24 STRATOSPHERE INFRINGE CLAIM 18 OF THE '172 PATENT. YOU NEED  
25 ONLY DETERMINE WHETHER CLAIM 18 IS INVALID.

1 SAMSUNG HAS ALSO BROUGHT CLAIMS AGAINST APPLE FOR PATENT  
2 INFRINGEMENT. SAMSUNG SEEKS MONEY DAMAGES FROM APPLE FOR  
3 ALLEGEDLY INFRINGING THE '449 AND '239 PATENTS BY MAKING,  
4 IMPORTING, USING, SELLING AND/OR OFFERING FOR SALE APPLE'S, 1,  
5 CERTAIN IPHONE AND IPOD TOUCH PRODUCTS THAT SAMSUNG ARGUES ARE  
6 COVERED BY CLAIM 27 OF THE '449 PATENT; AND, NUMBER 2, CERTAIN  
7 IPHONE AND IPAD PRODUCTS THAT SAMSUNG ARGUES ARE COVERED BY  
8 CLAIM 15 OF THE '239 PATENT.

9 SAMSUNG ALSO CONTENDS THAT APPLE'S INFRINGEMENT HAS BEEN  
10 WILLFUL.

11 APPLE DENIES THAT IT HAS INFRINGED THE CLAIMS ASSERTED BY  
12 SAMSUNG. APPLE DOES NOT ARGUE THAT SAMSUNG'S PATENTS ARE  
13 INVALID. THEREFORE, YOU NEED ONLY DETERMINE WHETHER THE '449  
14 AND THE '239 PATENTS ARE INFRINGED AND WHETHER THAT  
15 INFRINGEMENT HAS BEEN WILLFUL.

16 IN THIS CASE, APPLE DOES NOT CONTEND THAT IT PRACTICES THE  
17 '414, '172 OR '959 PATENTS, AND SAMSUNG DOES NOT CONTEND THAT  
18 IT PRACTICES THE '449 PATENT.

19 FOR EACH PARTY'S PATENT INFRINGEMENT CLAIMS AGAINST THE  
20 OTHER, THE FIRST ISSUE YOU WILL BE ASKED TO DECIDE IS WHETHER  
21 THE ALLEGED INFRINGER HAS INFRINGED THE CLAIMS OF THE PATENT  
22 HOLDER'S PATENTS. FOR APPLE'S PATENTS, YOU WILL ALSO BE ASKED  
23 TO DECIDE WHETHER THOSE PATENTS ARE VALID.

24 IF YOU DECIDE THAT ANY CLAIM OF EITHER PARTY'S PATENTS HAS  
25 BEEN INFRINGED AND, FOR APPLE'S PATENTS, IS NOT INVALID, YOU

1 WILL THEN NEED TO DECIDE ANY MONEY DAMAGES TO BE AWARDED TO THE  
2 PATENT HOLDER TO COMPENSATE IT FOR THE INFRINGEMENT.

3 YOU WILL ALSO NEED TO MAKE A FINDING AS TO WHETHER THE  
4 INFRINGEMENT WAS WILLFUL.

5 IF YOU DECIDE THAT ANY INFRINGEMENT WAS WILLFUL, THAT  
6 DECISION SHOULD NOT AFFECT ANY DAMAGE AWARD YOU GIVE. I WILL  
7 TAKE WILLFULNESS INTO ACCOUNT LATER.

8 BEFORE YOU DECIDE WHETHER EITHER PARTY HAS INFRINGED THE  
9 OTHER'S PATENTS, OR WHETHER APPLE'S PATENTS ARE INVALID, YOU  
10 WILL NEED TO UNDERSTAND THE PATENT CLAIMS. AS I MENTIONED, THE  
11 PATENT CLAIMS ARE NUMBERED SENTENCES AT THE END OF THE PATENT  
12 THAT DESCRIBE THE BOUNDARIES OF THE PATENT'S PROTECTION.

13 IT IS MY JOB AS JUDGE TO EXPLAIN TO YOU THE MEANING OF ANY  
14 LANGUAGE IN THE CLAIMS THAT NEEDS INTERPRETER.

15 I HAVE ALREADY DETERMINED THE MEANING OF CERTAIN TERMS OF  
16 THE CLAIMS OF SOME OF THE PATENTS AT ISSUE. YOU WILL BE ASKED  
17 TO APPLY MY DEFINITIONS OF THESE TERMS IN THIS CASE.

18 HOWEVER, MY INTERPRETATION OF THE LANGUAGE OF THE CLAIMS  
19 SHOULD NOT BE TAKEN AS AN INDICATION THAT I HAVE A VIEW  
20 REGARDING ISSUES, SUCH AS INFRINGEMENT (EXCEPT FOR APPLE'S '172  
21 PATENT) AND INVALIDITY. THOSE ISSUES ARE YOURS TO DECIDE.

22 I WILL PROVIDE YOU WITH MORE DETAILED INSTRUCTIONS ON THE  
23 MEANING OF THE CLAIMS BEFORE YOU RETIRE TO DELIBERATE YOUR  
24 VERDICT.

25 FINAL INSTRUCTION.

1 THE TRIAL WILL NOW BEGIN. FIRST, EACH SIDE MAY MAKE AN  
2 OPENING STATEMENT. AN OPENING STATEMENT IS NOT EVIDENCE. IT  
3 IS SIMPLY AN OUTLINE TO HELP YOU UNDERSTAND WHAT THAT PARTY  
4 EXPECTS THE EVIDENCE WILL SHOW.

5 THE PRESENTATION OF EVIDENCE WILL THEN BEGIN. WITNESSES  
6 WILL TAKE THE WITNESS STAND AND THE DOCUMENTS WILL BE OFFERED  
7 AND ADMITTED INTO EVIDENCE.

8 THERE ARE TWO STANDARDS OF PROOF THAT YOU WILL APPLY TO  
9 THE EVIDENCE, DEPENDING ON THE ISSUE YOU ARE DECIDING. ON SOME  
10 ISSUES, YOU MUST DECIDE WHETHER SOMETHING IS MORE LIKELY TRUE  
11 THAN NOT. ON OTHER ISSUES, YOU MUST USE A HIGHER STANDARD AND  
12 DECIDE WHETHER IT IS HIGHLY PROBABLE THAT SOMETHING IS TRUE.

13 APPLE WILL START BY PRESENTING ITS EVIDENCE ON ITS  
14 CONTENTIONS THAT SAMSUNG HAS INFRINGED APPLE'S PATENTS. APPLE  
15 WILL ALSO PRESENT ITS EVIDENCE THAT SAMSUNG'S INFRINGEMENT HAS  
16 BEEN WILLFUL.

17 THESE WITNESSES WILL BE QUESTIONED BY APPLE'S COUNSEL IN  
18 WHAT IS CALLED DIRECT EXAMINATION.

19 AFTER THE DIRECT EXAMINATION OF A WITNESS IS COMPLETED,  
20 SAMSUNG HAS AN OPPORTUNITY TO CROSS-EXAMINE THE WITNESS.

21 TO PROVE INFRINGEMENT OF ANY CLAIM, APPLE MUST PERSUADE  
22 YOU THAT IT IS MORE LIKELY THAN NOT THAT SAMSUNG HAS INFRINGED  
23 APPLE'S PATENTS.

24 AFTER APPLE HAS PRESENTED ITS WITNESSES, SAMSUNG WILL CALL  
25 ITS WITNESSES, WHO WILL ALSO BE EXAMINED AND CROSS-EXAMINED.

1 SAMSUNG WILL PRESENT ITS EVIDENCE ON ITS CONTENTIONS THAT APPLE  
2 HAS INFRINGED SAMSUNG'S PATENTS.

3 SAMSUNG WILL ALSO PRESENT ITS EVIDENCE THAT APPLE'S  
4 INFRINGEMENT HAS BEEN WILLFUL.

5 TO PROVE INFRINGEMENT OF ANY CLAIM, SAMSUNG MUST PERSUADE  
6 YOU THAT IT IS MORE LIKELY THAN NOT THAT APPLE HAS INFRINGED  
7 SAMSUNG'S PATENTS.

8 SAMSUNG WILL ALSO PRESENT ITS EVIDENCE THAT ASSERTED  
9 CLAIMS OF APPLE'S PATENTS ARE NOT INFRINGED AND ARE INVALID.  
10 TO PROVE INVALIDITY OF ANY CLAIM, SAMSUNG MUST PERSUADE YOU  
11 THAT IT IS HIGHLY PROBABLE THAT THE CLAIM IS INVALID.

12 APPLE WILL THEN RETURN AND WILL PUT ON EVIDENCE RESPONDING  
13 TO SAMSUNG'S CONTENTION THAT THE APPLE PATENTS ARE INVALID.  
14 APPLE WILL THEN PRESENT ITS EVIDENCE THAT ASSERTED CLAIMS OF  
15 SAMSUNG'S PATENTS ARE NOT INFRINGED.

16 BECAUSE THE EVIDENCE IS INTRODUCED PIECEMEAL, YOU MAY NEED  
17 TO KEEP AN OPEN MIND AS THE EVIDENCE COMES IN AND WAIT FOR ALL  
18 THE EVIDENCE BEFORE YOU MAKE ANY DECISIONS. IN OTHER WORDS,  
19 YOU SHOULD KEEP AN OPEN MIND THROUGHOUT THE ENTIRE TRIAL.

20 AFTER THE EVIDENCE HAS BEEN PRESENTED, I WILL GIVE YOU  
21 FINAL INSTRUCTIONS ON THE LAW THAT APPLIES TO THE CASE, AND THE  
22 ATTORNEYS WILL MAKE CLOSING ARGUMENTS. CLOSING ARGUMENTS ARE  
23 NOT EVIDENCE.

24 AFTER THE INSTRUCTIONS AND CLOSING ARGUMENTS, YOU WILL  
25 THEN DECIDE THE CASE.

1           WOULD EVERYONE JUST LIKE A MINUTE TO JUST STAND UP. WHY  
2           DON'T WE ALL JUST TAKE A STAND UP MOMENT BEFORE THE LIGHTS GO  
3           OFF FOR THE VIDEO.

4           THE COURT: WE'RE NOW GOING TO WATCH A VIDEO. IT'S  
5           ABOUT 17 MINUTES. I'M GOING TO ASK MS. PARKER BROWN IF YOU  
6           WOULD DIM THE LIGHTS, PLEASE.

7           (A VIDEOTAPE WAS PLAYED IN OPEN COURT OFF THE RECORD.)

8           THE COURT: ALL RIGHT. WE ARE NOW READY FOR OPENING  
9           STATEMENTS. EACH SIDE MAY MAKE ONE, BUT THEY'RE NOT REQUIRED  
10          TO DO SO.

11          I REMIND YOU THAT AN OPENING STATEMENT IS NOT EVIDENCE.

12          WE ARE GOING TO KEEP OUR REGULAR SCHEDULE OF TAKING A  
13          BREAK AT 10:30 FOR AT LEAST 15 MINUTES. WE'LL STILL TAKE OUR  
14          LUNCH BREAK FROM NOON TO 1:00 AND HAVE OUR REGULAR AFTERNOON  
15          BREAKS. OKAY?

16          ALL RIGHT. GO AHEAD, PLEASE. TIME IS NOW 10:00 O'CLOCK.

17          MR. MCELHINNY: THANK YOU, YOUR HONOR.

18          **(MR. MCELHINNY GAVE HIS OPENING STATEMENT ON BEHALF OF**  
19          **PLAINTIFF.)**

20          MR. MCELHINNY: MAY IT PLEASE THE COURT.

21          GOOD MORNING.

22          JURORS: GOOD MORNING.

23          MR. MCELHINNY: WHERE WERE YOU ON JANUARY 9TH, 2007?

24          THERE ARE A LOT OF PROBLEMS WITH LAWSUITS, AND I THINK BY  
25          THE TIME WE'RE DONE, YOU'LL HAVE YOUR OWN LITTLE LIST OF ALL



1 THE PROBLEMS WITH LAWSUITS AND IMPORTANT TRIALS.

2 BUT ONE OF THEM THAT I WANT TO ILLUSTRATE FOR YOU IS THAT  
3 IT TAKES A WHILE TO GET TO COURT. IT TAKES A WHILE TO BRING A  
4 DISPUTE TO A JURY LIKE YOU, AND DURING THAT TIME, TIME PASSES  
5 AND LIFE CHANGES AND THINGS THAT WERE NEW BEFORE NOW SEEM  
6 COMMON.

7 AND SO ONE OF THE TESTS HERE, ONE OF THE THINGS THAT YOU  
8 SORT OF HAVE TO DO IS PUT YOURSELF BACK IN TIME WHEN THESE  
9 EVENTS OCCURRED AND REMEMBER WHAT LIFE WAS LIKE THEN.

10 SO THAT'S WHY I STARTED WITH THAT QUESTION. WHERE WERE  
11 YOU ON JANUARY 9TH, 2007?

12 WE KNOW THAT ON THAT DATE HUNDREDS OF PEOPLE IN THE BAY  
13 AREA WERE IN THE MOSCONE CONVENTION CENTER IN SAN FRANCISCO AT  
14 THE MACWORLD CONVENTION BECAUSE THAT IS THE DATE THAT THE  
15 IPHONE WAS INTRODUCED.

16 AND WE KNOW THAT BECAUSE WE HAVE A VIDEOTAPE OF THAT  
17 PRESENTATION WHICH I WOULD LIKE TO SHOW YOU.

18 (A VIDEOTAPE WAS PLAYED IN OPEN COURT OFF THE RECORD.)

19 MR. MCELHINNY: MY NAME IS HAROLD MCELHINNY. YOU MET  
20 MY GOOD FRIEND, BILL LEE, YESTERDAY. AND ALONG WITH MARK  
21 SELWYN AND MY PARTNER, RACHEL KREVANS, AND OTHER MEMBERS OF OUR  
22 TEAM, IT IS OUR PRIVILEGE AND HONOR TO BE REPRESENTING APPLE IN  
23 THIS LITIGATION AGAINST SAMSUNG ELECTRONICS AND ITS  
24 SUBSIDIARIES.

25 IT IS OUR JOB TO BRING YOU THE EVIDENCE THAT YOU'RE GOING

1 TO NEED IN ORDER TO DO YOUR JOB, WHICH IS TO DECIDE THE ISSUES  
2 THAT JUDGE KOH WILL GIVE YOU AT THE END OF THIS CASE.

3 WHILE I'M MAKING INTRODUCTIONS, I WOULD LIKE TO INTRODUCE  
4 TWO OTHER PEOPLE TO YOU. IN THE AUDIENCE WE HAVE BRUCE SEWELL,  
5 WHO'S THE GENERAL COUNSEL OF APPLE, AND NOREEN KRALL, WHO'S THE  
6 VICE-PRESIDENT AND IN CHARGE OF LITIGATION FOR APPLE. AND  
7 NOREEN IS MY BOSS.

8 ON BEHALF OF ALL OF APPLE'S EMPLOYEES, WE WOULD LIKE TO  
9 THANK YOU FOR SERVING ON THIS JURY.

10 ALMOST SEVEN YEARS AGO, THE INTRODUCTION OF THE IPHONE  
11 LITERALLY CHANGED THE NATURE OF THE TELEPHONE. THE PEOPLE AT  
12 APPLE INVENTED A WAY TO PUT THE COMPUTING POWER OF A MAC  
13 COMPUTER ON A HANDHELD COMMUNICATIONS DEVICE.

14 THEY ALSO MOVED THE WORLD FROM A PHYSICAL KEYBOARD TO  
15 TAPPING ON AN INTERACTIVE GLASS FACE.

16 THOSE WERE TWO DRAMATIC CHANGES THAT HAPPENED AT THAT  
17 MOMENT, AND THAT'S WHY TODAY, WHEN EVERYBODY DOESN'T --  
18 SOMEBODY THE OTHER DAY JUST SAID TO ME, DO YOU REMEMBER WHEN  
19 PEOPLE USED TO TALK ON TELEPHONES? DO YOU REMEMBER WHEN THEY  
20 USED TO HAVE THOSE BIG BACK TELEPHONES? DO YOU REMEMBER WHEN  
21 THERE USED TO BE PAY TELEPHONE BOOTHS ON EVERY CORNER?

22 THAT WORLD IS GONE, AND IT CHANGED ON THAT DAY IN JANUARY  
23 OF 2007.

24 YOU DON'T NEED TO TAKE MY WORD FOR THE EFFECT THAT THE  
25 IPHONE HAD. DURING THIS TRIAL, YOU'LL SEE A NUMBER OF

1 CONTEMPORANEOUS ARTICLES AND REVIEWS THAT WILL REMIND YOU OF  
2 THOSE EFFECTS.

3 SO, FOR EXAMPLE, YOU WILL SEE PLAINTIFF'S EXHIBIT 135A.  
4 WE WILL USE SOME TERMINOLOGY, PLAINTIFF'S EXHIBIT, YOU CAN SEE  
5 THAT THE LOWER RIGHT-HAND CORNER, IT SAYS PDX, PLAINTIFF'S  
6 EXHIBIT 135A, AS WE REFER TO THOSE, IF YOU WANT TO TAKE NOTES,  
7 YOU WILL HAVE THESE IN THE JURY ROOM WHEN YOU'RE DONE.

8 THIS EXHIBIT WAS AN ARTICLE THAT APPEARED IN THE  
9 "NEW YORK TIMES" THE DAY AFTER THE ANNOUNCEMENT. IT WAS  
10 WRITTEN BY A GENTLEMAN BY THE NAME OF DAVID POGUE, WHO IS A  
11 WELL-KNOWN TECHNOLOGY REPORTER.

12 AND AMONG OTHER THINGS HE SAID IN THE ARTICLE, HE SAID  
13 "THIS MACHINE IS SO PACKED WITH POSSIBILITIES THAT THE CELL  
14 PHONE MAY ACTUALLY BE THE LEAST INTERESTING PART."

15 YOU WILL SEE THIS DOCUMENT, WHICH IS PX 133. IN 2007,  
16 "TIME MAGAZINE" NAMED THE IPHONE THE TIME BEST INVENTIONS OF  
17 2007.

18 ON THE COVER, IT SAID, "FROM THE PHONE THAT HAS CHANGED  
19 PHONES FOREVER."

20 AND AS WE NOW KNOW, THAT TURNED OUT TO BE PROPHETICALLY  
21 CORRECT. IT ACTUALLY SPELLED OUT, THEY PUT THE COVER, THE  
22 PRODUCT ITSELF ON THE COVER OF "TIME MAGAZINE" AND SPELLED OUT  
23 "BEST INVENTIONS" USING APPLE'S NEW ICONIC ICONS.

24 THE ARTICLE ITSELF SAID THAT THE PHONE WAS TOUCHY FEELY.  
25 IT WAS A TOUCHSCREEN DEVICE.

1 IT SAID, "APPLE'S ENGINEERS USED THE TOUCHSCREEN TO  
2 INNOVATE PAST THE GRAPHICAL USER INTERFACE (WHICH APPLE HELPED  
3 PIONEER WITH MACINTOSH IN THE 1980S) TO CREATE A WHOLE NEW KIND  
4 OF INTERFACE."

5 AND, FINALLY, IT SAID "THIS IS, AS ENGINEERS SAY,  
6 NONTRIVIAL."

7 THAT LAST QUOTE I HOPE YOU WILL FIND, AS I DO, THAT IT'S  
8 PARTICULARLY IMPORTANT AND RELEVANT.

9 IN THIS CASE, SAMSUNG'S LAWYERS AND WITNESSES WILL TRY TO  
10 TELL YOU EXACTLY THE OPPOSITE. THEY WILL TRY TO TELL YOU THAT  
11 OUR INVENTIONS ARE AND WERE TRIVIAL AND THAT THEY ARE NOT  
12 VALUABLE.

13 BUT THAT'S NOT WHAT THE WORLD WAS SAYING IN 2007.

14 YOU WILL ALSO SEE THIS ARTICLE, WHICH IS PLAINTIFF'S  
15 EXHIBIT 134. THIS IS SEVERAL YEARS LATER IN 2011. HERE IS AN  
16 ARTICLE FROM THE "NEW YORK TIMES" REPORTING THAT THE U.S.  
17 PATENT AND TRADEMARK OFFICE, THE OFFICE THAT YOU JUST HEARD  
18 ABOUT THAT ISSUES PATENTS, PUT TOGETHER A DISPLAY FOR THE  
19 PUBLIC TO EXPLAIN PART OF ITS WORK, AND IT PUT TOGETHER A  
20 DISPLAY BASED ON THE INVENTIONS OF STEVE JOBS.

21 AND IN THIS ARTICLE BY MR. BRIAN CHEN, A FAMOUS REPORTER  
22 FOR THE "NEW YORK TIMES," IT SAID "PATENTS ON TECHNOLOGICAL  
23 DEVICES DO NOT ALWAYS RESULT IN REAL PRODUCTS THAT HIT THE  
24 CONSUMER MARKET, BUT THEY DOCUMENT AN INVENTOR'S RESEARCH AND  
25 METHODOLOGY IN DIFFERENT AREAS OF DESIGN AND ENGINEERING."

1 THAT'S HOW THE WORLD HAS REACTED TO THIS INVENTION.

2 BUT AT THE SAME TIME, AT THIS SAME KEYNOTE ADDRESS WHEN  
3 MR. JOBS INTRODUCED THE IPHONE, HE ALSO WARNED APPLE'S  
4 COMPETITORS THAT APPLE HAD APPLIED FOR PATENT PROTECTION TO  
5 PROTECT THE MANY INVENTIONS THAT HAD BEEN DEVELOPED AS PART OF  
6 THE IPHONE PROJECT.

7 YOU WILL HEAR EVIDENCE FROM PEOPLE WHO WERE THERE DURING  
8 THIS TRIAL, THAT THE IPHONE WAS THE RESULT OF A THREE YEAR, TOP  
9 SECRET RESEARCH AND DEVELOPMENT PROJECT THAT HAPPENED AT APPLE,  
10 THOUSANDS AND THOUSANDS OF PEOPLE -- OF ENGINEERING HOURS THAT  
11 WENT INTO THE DEVELOPMENT OF THIS PROGRAM.

12 YOU WILL ALSO HEAR -- AND, FRANKLY, AGAIN, TIME CHANGES  
13 EVERYTHING. THIS -- THIS MAY SEEM INCONCEIVABLE TO YOU, BUT  
14 YOU WILL HEAR THAT AT THE TIME, IN 1974 WHEN THIS PROJECT  
15 STARTED, IT WAS CONSIDERED AN EXTRAORDINARILY RISKY PROJECT.  
16 SEVERAL YEARS BEFORE THEN, APPLE AS A COMPANY HAD ALMOST GONE  
17 OUT OF BUSINESS.

18 AND YET, THEY WERE GOING TO TAKE ON THIS CHALLENGE OF A  
19 PHONE.

20 IN 2004, APPLE WAS A COMPUTER COMPANY. IT HAD NO PHONE  
21 EXPERIENCE. AND IT WAS GOING TO INVEST THIS TIME TO COME UP  
22 WITH A PRODUCT TO COMPETE AGAINST SOME OF THE LARGEST COMPANIES  
23 IN THE WORLD: MOTOROLA, NOKIA, SAMSUNG. THEY WERE ALL  
24 ESTABLISHED IN THE PHONE BUSINESS.

25 BUT APPLE, FRESH FROM THIS NEAR DEATH EXPERIENCE, WAS

1 PUTTING ITS TIME AND ITS MONEY AND ITS INVESTMENT AND ITS  
2 PEOPLE TO WORK ON A PHONE TO COMPETE IN THIS MARKET.

3 SO APPLE WAS NOT WILLING TO GIVE AWAY ITS INVENTIONS TO  
4 ITS COMPETITORS. IT SOUGHT AND IT OBTAINED PATENTS TO PROTECT  
5 THEM.

6 THIS CASE IS ABOUT FIVE OF THE PATENTS THAT APPLE WAS  
7 AWARDED IN CONNECTION WITH THAT PROJECT AND WORK THAT WAS DONE  
8 AT APPLE.

9 THE FIRST IS THE '721 PATENT. YOU SAW PICTURES OF IT IN  
10 THE MOVIE. THIS IS WHAT A PATENT ACTUALLY LOOKS LIKE WHEN IT'S  
11 ISSUED BY THE PATENT AND TRADEMARK OFFICE. YOU SAW THE  
12 PRINTING, THE COVER, THE GOLD SEAL. UNFORTUNATELY, IN YOUR  
13 ROOM YOU'LL ONLY HAVE A COPY OF THIS BECAUSE THIS IS THE  
14 ORIGINAL, BUT THIS IS WHAT A PATENT LOOKS LIKE (INDICATING).

15 THIS PATENT, WHICH YOU'LL SEE WE'VE BLOWN UP, WAS APPLIED  
16 FOR IN 2009. BUT, AGAIN, GIVEN THE DELAY IN THE PATENT OFFICE,  
17 IT DIDN'T ISSUE UNTIL OCTOBER 2011.

18 SO I WANT TO TALK ABOUT THIS PATENT, BUT BEFORE I DO, I  
19 WANT TO REPEAT SOMETHING THAT YOU'VE NOW HEARD TWICE AND SO  
20 INDULGE ME, PLEASE, ONCE SO THAT YOU HAVE THIS ONCE AND THEN WE  
21 WON'T HAVE TO TALK ABOUT IT AGAIN, BUT THAT'S HOW TO READ A  
22 PATENT. YOU HAVE A COPY OF THIS PATENT ALSO IN YOUR BINDER IF  
23 YOU WANT TO LOOK AT IT. YOU DON'T HAVE TO. I HAVE THE SLIDES.

24 MUCH OF THE BASIC INFORMATION THAT'S IMPORTANT ABOUT A  
25 PATENT IS ON THE FIRST PAGE. THAT INCLUDES THE PATENT NUMBER,

1 WHICH IN THIS CASE IS 8,046,721.

2 AS YOU HEARD, WE DON'T SAY THE WHOLE NUMBER. WE SAY WE'LL  
3 CALL THIS THE '721 PATENT.

4 THE FIRST PAGE ALSO CONTAINS THE FORMAL NAME OF THE  
5 PATENT, AND IN THIS CASE, THAT IS "UNLOCKING A DEVICE BY  
6 PERFORMING GESTURES ON AN UNLOCK IMAGE."

7 IT CONTAINS THE NAMES OF THE INVENTORS AND THE COMPANY  
8 THAT OWNS THE PATENT, AND IN THIS CASE THAT, OF COURSE, IS  
9 APPLE.

10 AND THEN FINALLY -- NOT FINALLY, BUT IT ALSO CONTAINS THE  
11 DATE ON WHICH IT WAS ISSUED, IN THIS CASE OCTOBER 25TH, 2011.

12 AND ALSO ON THE FRONT PAGE YOU'LL FIND SOMETHING CALLED  
13 THE ABSTRACT, WHICH IS A SUMMARY OF THE INVENTION.

14 THE FIRST PAGE OF THE PATENT AND THE REMAINING PAGES UP TO  
15 THE END ARE FREQUENTLY CALLED THE SPECIFICATION. AND THEY  
16 INCLUDE PICTURES WHICH LAWYERS CALL FIGURES. THAT'S WHY YOU'LL  
17 SEE THEM NUMBERED, FIGURE 1, FIGURE 2, FIGURE 3.

18 AND THEN THERE ARE PAGES OF TEXT THAT EXPLAIN THE  
19 INVENTION IN DETAIL.

20 AND THEN FINALLY, EACH PATENT CONTAINS WHAT IS CALLED THE  
21 CLAIMS. THE CLAIMS COME AT THE END OF THE PATENT, AND EACH  
22 CLAIM IS AN ATTEMPT TO CAPTURE IN WORDS THE IDEA OF THE  
23 INVENTION THAT THE INVENTOR IS CLAIMING IN HIS PATENT. AND  
24 THEY ARE, LIKE YOU'VE NOW HEARD THREE TIMES, THEY GIVE YOU THE  
25 BOUNDARIES OF THE CLAIM. THEY'RE LIKE THE WORDS THAT YOU USE

1 IN A DEED TO EXPLAIN THE PROPERTY LINES. BUT IT'S THIS ATTEMPT  
2 TO TAKE AN IDEA AND CAPTURE IT IN WORDS SO THAT PEOPLE  
3 UNDERSTAND WHAT IS YOUR PROPERTY.

4 TO MAKE IT EVEN TOUGHER, BECAUSE IT IS A CHALLENGE,  
5 PATENTS DON'T HAVE PAGE NUMBERS. INSTEAD, THEY HAVE COLUMNS.  
6 AND SO WHEN YOU LOOK AT THE TEXT OF THE PATENT, YOU'LL SEE  
7 COLUMN NUMBERS. EACH PAGE IS DIVIDED INTO TWO COLUMNS. AND AT  
8 THE TOP OF EACH COLUMN THERE WILL BE A COLUMN NUMBER.

9 AND THEN THEY HAVE LINES. AND RUNNING DOWN THE MIDDLE OF  
10 THE PAGE THERE ARE REFERENCES FOR LINE NUMBERS.

11 SO IF YOU WANT TO REFER SOMEBODY -- AND THIS'LL HAPPEN TO  
12 YOU IN THIS CASE -- IF WE SAY WE WANT YOU TO SEE WHAT WAS  
13 WRITTEN, WE'LL SAY LOOK AT COLUMN WHATEVER AT LINES SO AND SO,  
14 SO YOU GO TO THE COLUMN, THE TOP OF THE PAGE, RUN DOWN THAT  
15 INDEX IN THE MIDDLE AND FIND THE LINES THAT YOU'RE LOOKING FOR,  
16 AND THAT'S THE WAY THAT YOU REFERENCE A PATENT.

17 IN THE '721 PATENT, THE CLAIMS START AT COLUMN 19, LINE  
18 22, AND THEY START WITH ONE OF THE PHRASES THAT'S TYPICAL IN  
19 PATENTS, IT SAYS AFTER -- "WHAT IS CLAIMED IS."

20 SO WE'VE GIVEN YOU THE DESCRIPTION. WE'RE NOW DOWN TO THE  
21 END, AND IT SAYS THIS IS WHERE THE CLAIMS START FROM HERE ON.

22 AND AS YOU HEARD FROM JUDGE KOH, IN THIS CASE WE ARE  
23 ASSERTING CLAIM 8 OF THE '721 PATENT, AND AS YOU WILL SEE, THIS  
24 IS A KIND OF PATENT -- CLAIM 8 IS WHAT -- WE HAVE TWO KINDS OF  
25 CLAIMS. WE HAVE A CLAIM THAT'S CALLED AN INDEPENDENT CLAIM,



1 WHICH MEANS IT JUST STANDS ON ITS OWN, AND WE HAVE A CLAIM  
2 THAT'S CALLED A DEPENDENT CLAIM. AND A DEPENDENT CLAIM  
3 REQUIRES YOU TO LOOK AT SOME OTHER CLAIM TO PUT IT ALL  
4 TOGETHER.

5 SO IF YOU LOOK AT THE LANGUAGE OF CLAIM 8 THAT STARTS WITH  
6 ANOTHER ONE OF THESE MAGIC PHRASES, IT SAYS "THE DEVICE OF  
7 CLAIM 7 FURTHER COMPRISING INSTRUCTIONS."

8 SO THAT TELLS YOU THAT IN ORDER TO UNDERSTAND WHAT IS IN  
9 CLAIM 8, YOU READ EVERYTHING THAT IS IN CLAIM 7 AND YOU INCLUDE  
10 CLAIM 8.

11 SO IT'S A, IT'S A DIFFERENT WAY OF EXPRESSING THE  
12 INVENTION. CLAIM 7 IS ONE WAY, CLAIM 8 ADDS ANOTHER WHAT WE  
13 CALL A LIMITATION IN ORDER TO EXPLAIN IT IN GREATER DETAIL.

14 BUT THE BOUNDARIES OF CLAIM 8 INCLUDE ALL OF THE LANGUAGE  
15 IN CLAIM 7 AND THE EXTRA LANGUAGE IN CLAIM 8.

16 WE CALL THE '721 PATENT THE SLIDE TO UNLOCK PATENT.  
17 THAT'S OUR NAME FOR IT INSTEAD OF THE FORMAL NAME THAT I SHOWED  
18 YOU BEFORE.

19 THIS PATENT RESPONDED TO PROBLEMS THAT WE'RE ALL FAMILIAR  
20 WITH CALLED POCKET DIALLING. OLD CELL PHONES THAT HAD BUTTONS,  
21 IF YOU WOULD PUT THEM IN YOUR POCKET, EVERY ONCE IN A WHILE YOU  
22 WOULD END UP CALLING SOMEBODY OR SOMEBODY WOULD CALL YOU OR  
23 THERE WOULD BE A PROBLEM, AND IT WAS AN UNINTENDED CALL.

24 I'VE HAD A NUMBER OF THOSE WHERE I COULD LISTEN TO MY  
25 GRANDCHILDREN BECAUSE THEY WERE PLAYING WITH THE PHONE, AND I'M

1 LISTENING AND THEY DON'T KNOW THAT I'M ON IT. IT'S AN  
2 UNINTENDED CALL.

3 THERE WAS A CONCERN THAT ON A TOUCHSCREEN PHONE, THESE  
4 UNINTENDED CALLS WOULD BE MORE COMMON BECAUSE YOU DIDN'T EVEN  
5 HAVE TO HIT BUTTONS. YOU JUST TOUCH THE SCREEN -- THEY WERE  
6 AFRAID YOU COULD SEND E-MAILS, YOU COULD DELETE THINGS. PEOPLE  
7 WERE CONCERNED ABOUT THAT SO THEY WANTED A MECHANISM THAT WOULD  
8 MAKE IT POSSIBLE TO LOCK THE PHONE AND THEN TO UNLOCK THE  
9 DEVICE, LIKE A SMARTPHONE, BY CONTINUOUSLY MOVING AN UNLOCKED  
10 IMAGE FROM ONE PREDEFINED LOCATION TO ANOTHER.

11 THE DEVICE ALSO DISPLAYS VISUAL CUES -- THIS IS ALL PART  
12 OF THE CLAIMS -- TO SHOW YOU HOW TO MOVE THE UNLOCKED IMAGE IN  
13 ORDER TO UNLOCK THE DEVICE.

14 THE DEVICE WAS -- THE INVENTION WAS IMPORTANT FOR TWO  
15 REASONS: ONE, IT SOLVED THIS PROBLEM OF UNINTENDED USES.

16 BUT IT DID IT IN A PARTICULARLY ATTRACTIVE WAY. THE  
17 UNLOCKING DEVICE, IF YOU THINK ABOUT IT, IS THE FIRST WAY YOU  
18 EVER APPROACH ONE OF THESE DEVICES. IT'S THE FIRST THING YOU  
19 DO ON THE PHONE.

20 AND THE APPLE UNLOCKING DEVICE ATTRACTED PEOPLE'S  
21 ATTENTION, ATTRACTED PEOPLE'S INTEREST. YOU'LL SEE REVIEWS  
22 THAT TALK ABOUT THE SLIDE BEING FUN AND WHIMSICAL. IT WAS HOW  
23 APPLE INTRODUCED THIS NEW PROJECT TO THE WORLD.

24 THIS PARTICULAR INVENTION WAS SO SIGNIFICANT THAT MR. JOBS  
25 ACTUALLY DEMONSTRATED IT AT THE ORIGINAL KEYNOTE, AND I'LL SHOW

1 YOU THAT.

2 (A VIDEOTAPE WAS PLAYED IN OPEN COURT OFF THE RECORD.)

3 MR. MCELHINNY: ANYBODY WHO HAS SEEN AN APPLE DEVICE  
4 IS FAMILIAR WITH THAT WAY OF UNLOCKING IT. IT'S BECOME A  
5 SIGNATURE MOVEMENT FOR APPLE AND ITS PHONES AND PRODUCTS.

6 THE SECOND PATENT THAT WE'RE ASSERTING IS A PATENT CALLED  
7 THE '172 PATENT, AND WE CALL THAT THE AUTOMATIC WORD CORRECTION  
8 PATENT.

9 AND IN THE '172 PATENT, WE ARE ASSERTING CLAIM 18, AND  
10 THAT COVERS AN EFFECTIVE WAY TO DISPLAY AND ACCEPT WORD  
11 CORRECTIONS WHEN TYPING ON A MOBILE DEVICE WITH A TOUCHSCREEN.

12 PEOPLE WERE MOVING FROM KEYBOARDS TO TOUCHSCREENS. IT WAS  
13 A NEW WAY OF APPROACHING THINGS. THE TOUCHSCREEN IS A LITTLE  
14 TOUGHER BECAUSE THE TARGETS ARE SMALLER. THERE WAS A CONCERN  
15 WHETHER OR NOT YOU COULD TYPE ACCURATELY, AND IN ORDER TO  
16 ASSIST THAT, IN ORDER TO MAKE IT USABLE, AN AUTOMATIC  
17 CORRECTION INVENTION GAVE PEOPLE THE CONFIDENCE THAT THEY COULD  
18 DO CORRECT AND ACCURATE TYPING ON THE TOUCHSCREEN DEVICE.

19 THIS INVENTION IN THE '172 DISPLAYS AS A PARTICULAR WAY OF  
20 DOING THAT, DISPLAYS THE TEXT THAT YOU ARE ACTUALLY TYPING IN  
21 ONE PLACE AND ON A SECOND PLACE ON THE PHONE IT SHOWS ONE OR  
22 MORE WORD SUGGESTIONS AND THE EXACT TEXT THAT YOU HAVE TYPED.

23 THE PHONE WILL AUTOMATICALLY ACCEPT THE CORRECTION AND PUT  
24 IN THE CORRECTED WORD IF YOU TAP ON THAT WORD OR IF YOU PRESS  
25 THE SPACE KEY.

1 SO IF YOU ARE A TYPIST AND YOU GO ON, THE SOFTWARE IS, IN  
2 FACT, CORRECTING YOUR TYPING AS YOU GO AHEAD SO THAT YOU CAN DO  
3 IT WITH SPEED AND WITH CONFIDENCE.

4 THE THIRD PATENT, THE '647 PATENT, IS WHAT WE CALL THE  
5 QUICK LINKS PATENT OR THE DATA CONNECTORS PATENT.

6 THIS IS ANOTHER PART YOU WILL RECOGNIZE IT AS SOON AS I  
7 TELL YOU WHAT IT IS, BUT IT'S ANOTHER PART OF BEING A VERY  
8 EFFECTIVE AND USEFUL COMMUNICATIONS DEVICE.

9 UNDER THIS PATENT, A PHONE THAT USES THIS INVENTION  
10 RECOGNIZES THE PATTERNS OF CERTAIN KIND OF DATA THAT HAVE BEEN  
11 ENTERED INTO THE PHONE. SO IT RECOGNIZES THAT SOMETHING IS A  
12 PHONE NUMBER, OR IT RECOGNIZES THAT SOMETHING IS AN E-MAIL  
13 ADDRESS, OR IT RECOGNIZES SOMETHING IS A RESIDENTIAL ADDRESS.

14 AND WHEN IT SEES THAT FORMAT, IT PRESENTS IT TO YOU ALONG  
15 WITH A MENU THAT ALLOWS YOU TO USE THAT INFORMATION IN AN  
16 EFFECTIVE AND EFFICIENT WAY.

17 IN OTHER WORDS, IF I SENT YOU -- WELL, I WON'T DO IT FOR  
18 ME BECAUSE YOU WOULDN'T CALL ME BACK. BUT IF SOMEONE YOU LIKED  
19 CALLED YOU, SENT YOU A PHONE NUMBER IN AN E-MAIL, INSTEAD OF  
20 YOU HAVING TO REMEMBER WHAT THAT PHONE NUMBER WAS OR PUT YOUR  
21 PHONE DOWN AND WRITE IT DOWN AND THEN GO BACK AND ENTER IT INTO  
22 THE PHONE, WHAT THIS INVENTION DOES IS IT RECOGNIZES THAT IT'S  
23 A PHONE NUMBER AND IT PRESENTS YOU A MENU THAT ALLOWS YOU TO  
24 SAY CALL THE NUMBER BACK, PUT IT INTO MY CONTACTS, RESPOND TO  
25 AN E-MAIL, AND YOU CAN DO THAT ALL ON A TOUCHSCREEN WITHOUT

1 EVER LOSING YOUR ATTENTION TO THE DEVICE THAT'S IN FRONT OF  
2 YOU, AN EFFICIENT, FUN, AND USEFUL WAY TO COMMUNICATE BETTER.

3 THE FOURTH PATENT IS SOMETHING THAT IS CALLED THE  
4 UNIVERSAL SEARCH PATENT. AGAIN, REMEMBER WHAT MR. JOBS SAID,  
5 THEY WERE COMBINING AN INTERNET BROWSER WITH A TELEPHONE.

6 AND WHAT UNIVERSAL SEARCH, THE IDEA BEHIND THIS INVENTION  
7 WAS TO ALLOW A USER OF A PHONE TO SEARCH FOR DATA  
8 SIMULTANEOUSLY ON THE PHONE ITSELF AND ON THE INTERNET. AND  
9 I'LL SHOW YOU EXAMPLES OF THESE A LITTLE BIT LATER.

10 BUT WHAT IT MEANS IS YOU COULD ADD SEARCH TERMS, AND THEY  
11 WOULD COME BACK TO YOU WITH A SEARCH THAT SEARCHED EVERYTHING  
12 THAT WAS ON YOUR PHONE BUT ALSO THE INTERNET.

13 BUT BETTER THAN THAT, IT USED SMART SOFTWARE SO THAT IT  
14 PRESENTED THE RESULTS OF THOSE SEARCHES TO YOU NOT RANDOMLY,  
15 BUT BASED ON YOUR USAGE OF THE PHONE, IT PRESENTED THE  
16 SUGGESTIONS TO YOU IN A WAY THAT THEY THOUGHT THAT YOU WOULD  
17 FIND USEFUL.

18 THE LAST PATENT, THE '414 PATENT, IS WHAT WE CALL THE  
19 BACKGROUND SYNC PATENT. AND THIS IS A PROGRAM THAT ALLOWS  
20 CERTAIN APPLICATIONS ON YOUR PHONE, SUCH AS THE CALENDAR AND  
21 THE CONTACTS APPLICATION, TO SHARE INFORMATION EITHER WITH EACH  
22 OTHER OR WITH OTHER COMPUTERS IN THE BACKGROUND WHILE YOU ARE  
23 STILL USING YOUR PHONE.

24 SOME OF YOU MAY BE FAMILIAR WITH OLDER PHONES WHERE TO  
25 SYNC THIS INFORMATION, YOU WOULD HAVE TO STOP USING IT OR YOU

1 WOULD GET A SIGNAL ON THE PHONE THAT SAY WAIT UNTIL WE'RE  
2 THROUGH SYNCING OR I HAD AN OLD BLACKBERRY WHERE YOU HAD TO PUT  
3 IT ON THE STAND AND THAT WAS INTERRUPTING, YOU COULDN'T KEEP  
4 USING YOUR PHONE, AND THIS INVENTION ALLOWS THE PHONE TO DO IT  
5 AT THE SAME TIME SO THAT THE USER IS NEVER DISRUPTED AND NEVER  
6 UNDERSTANDS ACTUALLY THAT THE SYNCING IS HAPPENING IN THE  
7 BACKGROUND.

8 SO THERE ARE FIVE APPLE PATENTS INVOLVED IN THIS TRIAL.

9 BUT I NEED TO MAKE ONE THING CLEAR. THE EVIDENCE IN THIS  
10 CASE WILL BE THAT SAMSUNG COPIED THE IPHONE.

11 AND IT ALSO TOOK MANY OTHER NOVEL APPLE INVENTIONS THAT  
12 MAY NOT YET HAVE APPEARED IN APPLE PRODUCTS. IT COPIED MANY,  
13 MANY FEATURES.

14 BUT THERE ARE LIMITS ON WHAT WE CAN ACCOMPLISH IN A SINGLE  
15 TRIAL. YOU'RE ALREADY GIVEN US A MONTH OF YOUR TIME. WE CAN'T  
16 TRY 50 PATENTS IN THIS CASE, SO WE ARE TRYING 5.

17 MR. QUINN: YOUR HONOR, I OBJECT. THIS IS NOT  
18 PROPER.

19 THE COURT: OVERRULED.

20 MR. MCELHINNY: I HAVE ALREADY SHOWN YOU HOW  
21 CRITIQUES AND THE WORLD IN GENERAL REACTED TO THE INTRODUCTION  
22 OF THE IPHONE. BUT WE ARE HERE TODAY, NOT BECAUSE OF A GENERAL  
23 REACTION, WE'RE HERE TODAY BECAUSE OF HOW ONE PARTICULAR  
24 COMPETITOR, SAMSUNG ELECTRONICS, CHOSE TO REACT TO THE IPHONE.

25 AS I PREVIOUSLY MENTIONED, SAMSUNG WAS ALREADY A PLAYER, A

1       HUGE PLAYER IN THE PHONE FIELD IN 2007.

2               BUT ONCE THE IPHONE WENT ON SALE, SAMSUNG PRETTY QUICKLY  
3       RECOGNIZED TWO THINGS.

4               FIRST, THAT THE IPHONE WAS TAKING THE WORLD BY STORM.  
5       CONSUMERS LOVED IT. IPHONES FOLLOWED BY THE IPADS WERE  
6       LITERALLY FLYING OFF THE SHELVES OF STORES.

7               BUT THE OTHER THING THAT SAMSUNG RECOGNIZED WAS THAT IT  
8       SIMPLY DID NOT HAVE A PRODUCT THAT COULD COMPETE SUCCESSFULLY  
9       AGAINST THE IPHONE.

10              AND SO BY FEBRUARY 10TH, 2010, SAMSUNG HAD REACHED A  
11      CRISIS POINT, A CRISIS POINT. "CRISIS" IS NOT MY WORD.  
12      "CRISIS" IS SAMSUNG'S WORD.

13              LET ME GIVE YOU A LITTLE BACKGROUND FOR THOSE OF YOU WHO  
14      ARE NOT FAMILIAR WITH LITIGATION.

15              PART OF THE PROCESS HERE, AS THIS LAWSUIT HAS BEEN  
16      PENDING, IS THAT EACH SIDE HAS TO TURN OVER TO THE OTHER ITS  
17      INTERNAL DOCUMENTS, ITS INTERNAL E-MAILS, ITS INTERNAL HISTORY  
18      OF DOCUMENTS.

19              AND BECAUSE WE HAVE OBTAINED SAMSUNG'S INTERNAL DOCUMENTS,  
20      WE HAVE BEEN ABLE TO RECONSTRUCT WHAT SAMSUNG WAS ACTUALLY  
21      THINKING, WHAT WAS REALLY HAPPENING. AND IT MAY NOT BE THE  
22      SAME AS WHAT YOU GET TOLD IN THIS TRIAL, BUT WE HAVE THE  
23      DOCUMENTS TO SHOW YOU WHAT WAS REALLY HAPPENING AT A PARTICULAR  
24      PERIOD OF TIME.

25              AND SO IN THIS CASE WE WILL BE ABLE TO SHOW YOU THE

1 FOLLOWING EXHIBIT: THIS IS AN E-MAIL THAT REFLECTS A MEETING  
2 THAT WAS HELD ON FEBRUARY 10TH, 2010. AND AT THAT MEETING,  
3 J.K. SHIN, WHO WAS THE HEAD OF THE ENTIRE PHONE DIVISION AT  
4 SAMSUNG, CALLED A HUGE MEETING OF ALL THE SAMSUNG'S SENIOR  
5 MANAGERS. HE SCOLDED THEM. HE TOLD THEM THAT SAMSUNG WAS  
6 SUFFERING, IN HIS WORDS, "A CRISIS OF DESIGN."

7 HE SAID "THE DIFFERENCE IN USER EXPERIENCE" -- UX STANDS  
8 FOR USER EXPERIENCE IN THE SAMSUNG TERMINOLOGY -- "THE  
9 DIFFERENCE IN USER EXPERIENCE BETWEEN THE IPHONE AND SAMSUNG  
10 PHONES WAS," QUOTE, "'THE DIFFERENCE BETWEEN HEAVEN AND  
11 EARTH.'" "

12 AND HE TOLD HIS MANAGERS THAT U.S. PHONE CARRIERS -- AND  
13 THE UNITED STATES, AS YOU KNOW, THEY ARE THE LARGEST SELLERS OF  
14 PHONES IN THE UNITED STATES, U.S. PHONE CARRIER COMPANIES,  
15 MR. SHIN TOLD HIS MANAGERS THAT THE U.S. PHONE CARRIERS WERE  
16 TELLING HIM TO, QUOTE, "MAKE SOMETHING LIKE THE IPHONE."

17 BECAUSE -- AND, AGAIN, I QUOTE HIM, "THE IPHONE HAS BECOME  
18 THE STANDARD."

19 IF WE MOVE FORWARD TO TODAY, WHAT WE ALL KNOW IS THAT THIS  
20 IS EXACTLY WHAT SAMSUNG HAS PROCEEDED TO DO. THESE ARE WHAT  
21 THE PHONES THAT WE ARE ACCUSING IN THIS CASE LOOK LIKE.

22 WE ALL KNOW NOW THAT SAMSUNG CHOSE TO MAKE AND SELL IN THE  
23 UNITED STATES PHONES AND A TABLET THAT INFRINGED THE FIVE  
24 PATENTS I SHOWED YOU EARLIER.

25 THIS CASE IS ABOUT THE FOLLOWING LIST OF PHONES AND



1 TABLETS. WHEN YOU DO YOUR VERDICT, YOU WILL HAVE A LIST  
2 SIMILAR TO THIS. YOU WON'T HAVE THE X'S FILLED IN, BUT YOU  
3 WILL HAVE A LIST THAT LISTS THE VARIOUS SAMSUNG PHONES THAT WE  
4 ARE ACCUSING. AND IN THESE CASES WE ACCUSE SOME OF INFRINGING  
5 ALL FIVE PHONES, SOME OF FOUR, AND SO ON.

6 BUT OUR EXPERTS AND OUR -- AS THE EVIDENCE COMES IN, YOU  
7 WILL GET MORE DETAIL ABOUT THIS. BUT THIS IS THE LIST OF  
8 PHONES THAT WE'RE ACCUSING IN THIS CASE OF INFRINGING THESE  
9 FIVE PATENTS.

10 WOULD NOW BE A GOOD TIME FOR A BREAK?

11 THE COURT: THAT'S FINE. IT'S 10:30.

12 MR. MCELHINNY: THANK YOU, YOUR HONOR.

13 THE COURT: ALL RIGHT. AGAIN, PLEASE DON'T RESEARCH  
14 OR DISCUSS THE CASE.

15 THERE ARE A LOT OF PEOPLE HERE, SO I THINK THERE MIGHT BE  
16 A LENGTH OF TIME TO USE THE RESTROOM. WE'LL TAKE A 20 MINUTE  
17 BREAK.

18 BUT PLEASE BE READY TO GO RIGHT IN 20 MINUTES. ALL RIGHT?

19 PLEASE DON'T RESEARCH OR DISCUSS THE CASE. THANK YOU.

20 (RECESS FROM 10:30 A.M. TO 10:51 A.M.)

21 (JURY IN AT 10:51 A.M.)

22 THE COURT: OKAY. WELCOME BACK. TIME IS NOW 10:51.

23 GO AHEAD, PLEASE.

24 MR. MCELHINNY: THANK YOU.

25 WE ALSO KNOW NOW FROM THE DOCUMENTS THAT WE HAVE OBTAINED

1 THAT SAMSUNG SPECIFICALLY CHOSE TO COPY THE FEATURES THAT WE'RE  
2 ASSERTING IN THIS CASE.

3 IN FACT, WHAT YOU'LL SEE FROM THE DOCUMENTS IS THAT  
4 COPYING THE IPHONE WAS LITERALLY BUILT INTO THE SAMSUNG  
5 DEVELOPMENT PROCESS.

6 DURING THE TRIAL, YOU WILL SEE THIS DOCUMENT, PLAINTIFF'S  
7 EXHIBIT 119. THIS IS A 2009 DOCUMENT FROM THE SAMSUNG DESIGN  
8 GROUP IN EUROPE.

9 THE TITLE OF THE DOCUMENT IS "MIEUX." THAT'S A FRENCH  
10 WORD THAT MEANS -- I'VE BEEN WAITING FOR 35 YEARS IN A  
11 COURTROOM TO SAY PARDON MY FRENCH -- BUT THAT IS A FRENCH WORD  
12 THAT I AM TOLD MEANS "BETTER."

13 SO IT SAID "MIEUX, EMOTIONAL UX," WHICH IS USER  
14 EXPERIENCE, AND THEN IT SAID "MAKE IT EMOTIONAL UX," WHICH IS  
15 M-I-E-U-X.

16 ON THE NEXT PAGE, THEY TELL US THAT WHAT THEY WERE  
17 STUDYING WAS "CREATING A MORE INTUITIVE AND EMOTIONAL SAMSUNG  
18 MOBILE INTERFACE."

19 AND ON THE THIRD PAGE, THEY SAY THAT WHAT THEY WERE  
20 LOOKING AT "SMALL, YET FUNDAMENTAL, PARTS OF THE USER INTERFACE  
21 ."

22 REMEMBER THAT WORD, FUNDAMENTAL. YOU WILL NOT BE HEARING  
23 FUNDAMENTAL FROM ANY SAMSUNG WITNESS OR EXPERT OR ANYONE WHO  
24 TESTIFIES ON THEIR BEHALF AT THIS TRIAL.

25 BUT THIS IS WHAT THEY WERE CALLING THESE INTERFACES IN

1 THEIR INTERNAL DOCUMENTS, DOCUMENTS THAT THEY NEVER EXPECTED TO  
2 SEE PUBLICLY IN A COURTROOM. FUNDAMENTAL.

3 SO LET'S SEE WHAT THEY SAID ABOUT SLIDE TO UNLOCK.

4 ON PAGE 11, THEY HAD A PAGE THAT WAS CALLED "APPLYING  
5 MEANINGFUL CREATIVITY."

6 AT THE TOP, IN THE PICTURES AND THE TWO BOXES ON THE LEFT,  
7 THEY TALK ABOUT THE EXISTING UNLOCK FUNCTIONS ON THE SAMSUNG  
8 PHONES, WHAT THEY HAD AT THE TIME. ONE WAS WHERE YOU PRESSED  
9 AN UNLOCK SCREEN OR AN OKAY BUTTON, AND THE OTHER WAS WHERE YOU  
10 HELD DOWN THE HOLD KEY.

11 AND SAMSUNG'S OWN DESIGNERS SAID THAT THOSE WAYS OF  
12 UNLOCKING THE PHONE "DO NOT EVOKE EMOTION," AND FOR THE OTHER  
13 ONE, "IS NOT APPEALING."

14 IN CONTRAST, AT THE BOTTOM HALF OF THE PAGE, THE DESIGNERS  
15 CALLED OUT WHAT THEY CALLED, QUOTE, "A CREATIVE WAY TO SOLVE  
16 USER INTERFACE COMPLEXITY," AND THE EXAMPLE THAT THEY SHOWED  
17 WAS THE IPHONE.

18 AND WHAT THEY SAID WAS "SWIPING UNLOCK ON THE SCREEN  
19 ALLOWS TO PREVENT ERRONEOUS UNLOCK EVEN WITHOUT USING A HARD  
20 KEY AND USERS FIND IT FUN TO SWIPE."

21 THIS IS ONE OF THEIR EXAMPLES OF A FUNDAMENTAL PART OF THE  
22 USER INTERFACE.

23 NOW, SAMSUNG IS GOING TO TELL YOU THAT THERE'S NOTHING  
24 WRONG WITH THEM LOCKING AT THE IPHONE. THEY'RE GOING TO SAY  
25 EVERY COMPANY KEEPS AN EYE ON THEIR COMPETITORS. IT'S CALLED

1 COMPETITIVE INTELLIGENCE. THEY'RE GOING TO SAY APPLE DOES  
2 THAT. ALL COMPANIES KEEP AN EYE ON WHAT THEIR COMPETITORS ARE  
3 DOING AND THERE'S NOTHING WRONG WITH THAT.

4 AND TO A POINT, ALL OF THAT IS TRUE.

5 BUT THE EVIDENCE IS GOING TO SHOW YOU THAT SAMSUNG DID NOT  
6 STOP WITH COMPETITIVE INTELLIGENCE.

7 YOU WILL SEE ALSO THIS DOCUMENT. THIS IS PLAINTIFF'S  
8 EXHIBIT 121. THIS IS ACTUALLY TWO COPIES OF IT. IT'S IN THE  
9 ORIGINAL KOREAN AND WITH AN ENGLISH TRANSLATION, SO IT'S NOT  
10 QUITE THIS THICK, BUT IT'S HALF THIS THICK, AND I'M GOING TO  
11 SHOW YOU SOME PAGES OF IT.

12 AND IT'S DATED MAY 31ST, 2010, AND IT WAS CALLED VICTOR  
13 USABILITY EVALUATION RESULTS.

14 AND THE EVIDENCE WILL BE THAT VICTOR WAS A CODE NAME FOR A  
15 TELEPHONE THAT THEY HAD UNDER DEVELOPMENT. SO THIS WAS A  
16 SURVEY THAT WAS DONE USING THE VICTORY TO DETERMINE WHAT  
17 CHANGES THEY NEEDED TO MAKE.

18 THE DOCUMENT IS 219 PAGES LONG.

19 THE THIRD SECTION WAS CALLED "MAIN USER EXPERIENCE  
20 USABILITY ISSUES."

21 AND IT BEGINS ON PAGE 22.

22 THE DOCUMENT THEN SETS OUT 88 OF THE MAIN ISSUES OR  
23 PROBLEMS THAT HAD BEEN IDENTIFIED BY A SURVEY GROUP WHO IT  
24 TESTED THIS VICTORY PROTOTYPE, AND EACH OF THOSE ISSUES IS  
25 PRESENTED IN EXACTLY THE SAME KIND OF FORMAT.

1 SO LET'S LOOK AT PAGE 30 -- 29 OF THE EXHIBIT. I JUST  
2 WANT TO SHOW YOU THE FORMAT.

3 AT THE TOP OF THE PAGE IS THE NAME OF THE PARTICULAR ISSUE  
4 THAT THEY'RE LOOKING AT. IN THIS CASE, IT SAID  
5 "EFFICIENCY\_BROWSING."

6 THEN IT DESCRIBED THE PROBLEM, AND IN THIS CASE THE  
7 PROBLEM WAS THAT THE PROTOTYPE DOES NOT PROVIDE A FOLDER  
8 FUNCTION IN THE ADD TO FAVORITES.

9 AND THEN THERE'S A COMPARISON WITH THE VICTORY ON THE LEFT  
10 SIDE AND THE IPHONE ON THE RIGHT SIDE AND A DESCRIPTION OF THE  
11 DIFFERENCES.

12 AND THEN AT THE BOTTOM OF EACH PAGE, THERE IS AN ENTRY  
13 THAT SAYS "DIRECTION OF IMPROVEMENT" TO THE DESIGN. SO IN THIS  
14 EXAMPLE, THE DIRECTION WAS TO ADD A FOLDER FUNCTION TO ALLOW  
15 THE USER TO ORGANIZATION THEIR FAVORITES.

16 "MODIFY TO ADD THE FOLDER FUNCTION TO THE WEBSITE  
17 FAVORITES."

18 88 IN THIS DOCUMENT ALONE OF THESE SIMILAR COMPARISONS.  
19 IT TURNS OUT THAT SEVERAL OF THE 88 ISSUES IN THIS  
20 DOCUMENT INVOLVED THE UNLOCKING FUNCTION.

21 ON PAGE 27, WE SEE THIS ONE, NUMBER 5, "EFFICIENCY\_SCREEN  
22 LOCK."

23 THE PROBLEM WAS THAT THE VICTORY FREQUENTLY COULDN'T BE  
24 UNLOCKED WITH ONE SWIPE. BUT THEY NOTED THAT THE IPHONE,  
25 HOWEVER, WAS EASILY UNLOCKED BY SLIDING A FIXED DISTANCE.

1 SO THE DIRECTION OF IMPROVEMENT FOR THE NEW SAMSUNG  
2 PHONES -- THINK ABOUT IT. THIS IS HOW THEY ARE DESIGNING THE  
3 PHONES.

4 AND THE DIRECTION OF IMPROVEMENT IS "MODIFY THE DEFAULT  
5 UNLOCKING METHOD SO AS TO ALLOW EASY UNLOCKING WITH ONE MOTION,  
6 BY MAKING THE TOUCH DISTANCE CLEAR SUCH AS WITH SLIDING OR  
7 MOVING A PUZZLE (PIECE)."

8 BUT IF THAT'S NOT CLEAR ENOUGH FOR YOU, IF THAT LEAVES ANY  
9 DOUBT IN YOUR MIND, TURN TO PAGE 100 OF THE EXHIBIT, AND THERE  
10 WE COME BACK TO LOCK, "SATISFACTION LEVEL\_LOCK SCREEN."

11 HERE THE PROBLEM WAS THAT THE VICTORY PROTOTYPE WAS TOO  
12 EASY TO UNLOCK WITH A SIMPLE FLICK MOTION. THE UNLOCKING IN  
13 THE IPHONE WAS DESCRIBED AS "PRECISE."

14 SO READ THE DIRECTION OF IMPROVEMENT. "SAME AS IPHONE,  
15 CLARIFY THE UNLOCKING STANDARD BY SLIDING."

16 THE DIRECTION OF IMPROVEMENT IN THEIR INTERNAL DOCUMENTS,  
17 SAME AS IPHONE.

18 SAMSUNG WENT FAR BEYOND THE WORLD OF COMPETITIVE  
19 INTELLIGENCE AND THEN CROSSED INTO THE DARK SIDE OF INTENTIONAL  
20 COPYING.

21 YOU WILL FIND THAT THE SAME IS TRUE WITH THE QUICK LINKS  
22 OR DATA DETECTORS. THERE WE'LL SHOW YOU THIS EXHIBIT -- THIS  
23 DOCUMENT, WHICH IS PLAINTIFF'S EXHIBIT 106.

24 WHAT THIS IS, AND YOU'LL HERE MORE ABOUT IT IN TRIAL, IS  
25 THAT THIS IS A COPY OF AN ARTICLE THAT HAD BEEN WRITTEN IN 1998

1 AND THEN POSTED ON AN APPLE -- THE INVENTOR, ONE OF THE  
2 INVENTORS OF THE APPLE PATENT AND THEN IT HAD BEEN POSTED IN  
3 2010, I BELIEVE, ON THE APPLE WEBSITE.

4 SO I JUST WANT YOU TO SEE THIS ARTICLE. ON THE SECOND  
5 PAGE OF THE ARTICLE, IT HAD A FIGURE -- IT HAS A SECTION CALLED  
6 APPLE DATA DETECTORS, WHICH AS YOU'LL RECALL IS THE OTHER NAME  
7 FOR OUR PATENT, WHAT WE CALL THE QUICK LINKS PATENT.

8 ON THE NEXT PAGE, IT HAD A FIGURE THAT ILLUSTRATED, AND AS  
9 YOU SEE THE TITLE AT THE BOTTOM, IT SAYS FIGURE 1, APPLE DATA  
10 DETECTORS IN ACTION. AND JUST HOLD THIS PICTURE IN YOUR MIND  
11 FOR A MOMENT. THAT'S THE FIGURE DESCRIBED AS APPLE DATA  
12 DETECTORS IN ACTION.

13 NOW WE'RE GOING TO JUMP FORWARD TO 2011, AND WE'RE GOING  
14 TO LOOK AT THIS SAMSUNG DOCUMENT, WHICH IS PLAINTIFF'S EXHIBIT  
15 107, WHICH WAS CALLED A USER EXPERIENCE ROADMAP.

16 THERE, ON PAGE 52, WE HAVE SOMETHING WHICH THEY CALLED A  
17 PROJECT PROPOSAL FOR A SMART ORGANIZER.

18 AND IT DESCRIBES THE PROPOSAL AND IT SAYS THAT IT, QUOTE,  
19 "AUTOMATICALLY APPLIES TO CALENDAR SCHEDULE IN THE E-MAIL  
20 CONTENTS ACCORDING TO THE USER'S INTENT."

21 AND THERE, LO AND BEHOLD, SAMSUNG SIMPLY CUT AND PASTED  
22 THE ILLUSTRATION FROM THE APPLE ARTICLE INTO ITS OWN ROADMAP,  
23 BUT TOOK SPECIAL CARE TO CHANGE THE CAPTION SO THAT IT NOW SAYS  
24 "E-MAIL CONTENT RECOGNITION, ARROW, CALENDAR."

25 THIS IS NOT COMPETITIVE INTELLIGENCE. THIS IS CUT AND

1 PASTE COPYING OF A PATENTED INVENTION.

2 THE COURT ALREADY TOLD YOU, IT'S IN THOSE INSTRUCTIONS AND  
3 I HOPE IT JUMPED OUT AT YOU, BUT THE COURT HAS ALREADY TOLD YOU  
4 THAT SAMSUNG INFRINGES THE AUTOMATIC WORD CORRECTION PATENT.  
5 THAT IS A DETERMINATION THAT THE COURT HAS ALREADY MADE.

6 SO LET'S TALK ABOUT BACKGROUND SYNC.

7 IN BACKGROUND SYNC, YOU'LL SEE THIS ARTICLE, WHICH IS  
8 EXHIBIT 115. AND THIS IS AN INTERNAL SAMSUNG E-MAIL DATED  
9 NOVEMBER 5, 2009 DESCRIBING PRODUCTS THAT WERE UNDER  
10 DEVELOPMENT.

11 ON PAGE 3, IT HAS A SECTION THAT EXPRESSLY DESCRIBES  
12 BACKGROUND SYNC. IT SAYS "ACCESS TO PHONEBOOK WHILE SYNC IS IN  
13 PROGRESS."

14 IT DESCRIBES THAT INVENTION AS SOMETHING THAT IS  
15 MANDATORY, AND AT THE END, IN TERMS OF WHAT IT INTENDS TO DO,  
16 IT SAYS "THIS MUST BE SUPPORTED FOR THE NEXT DEVICE OR  
17 PLATFORM."

18 WITH RESPECT TO UNIVERSAL SEARCH, THE EVIDENCE IS A LITTLE  
19 BIT DIFFERENT.

20 IN UNIVERSAL SEARCH, THE EVIDENCE WILL BE THAT AFTER WE  
21 FILED THIS CASE, SAMSUNG TURNED THE UNIVERSAL SEARCH FUNCTION  
22 OFF IN ITS PHONES.

23 BUT WHEN ITS USERS COMPLAINED ABOUT IT, IT MADE THE  
24 DECISION TO TURN THE FUNCTION BACK ON BECAUSE THEIR USERS'  
25 RESPONSE TO USING UNIVERSAL SEARCH WAS NEGATIVE AND STRONG.



1           YOU WILL SEE THIS ARGUMENT -- THIS ARTICLE, PLAINTIFF'S  
2           EXHIBIT 137, WHICH IS A CLIPPING FROM AN ARTICLE, A NEWSPAPER  
3           CALLED "TMO NEWS," AND ON THE SECOND PAGE DESCRIBING THIS  
4           HISTORY, THE NEWSPAPER SAYS, "IN WHAT APPEARS TO BE A LITTLE  
5           KNOWN DEVELOPMENT FROM YESTERDAY'S GALAXY S III JELLY BEAN  
6           UPDATE," THAT WAS A SOFTWARE UPDATE, "SAMSUNG LOOKS TO HAVE  
7           SNUCK LOCAL SEARCH BACK INTO THEIR TOUCHWIZ SOFTWARE. LOCAL  
8           SEARCH, IF YOU'LL RECALL, WAS REMOVED TO THE GALAXY S III IN  
9           RESPONSE TO APPLE'S LAWSUITS COURTESY OF A MAINTENANCE UPDATE  
10          THIS PAST AUGUST."

11           IT GOES ON TO SAY, "WE'RE THRILLED TO SEE ITS RETURN.  
12          LOCAL SEARCH ALLOWS FOR THE SEARCH APP TO LOOK FOR FILES ON THE  
13          PHONE, LIKE CONTACTS OR APPS, WHEN USERS ATTEMPT A WEB SEARCH  
14          FROM A PRELOADED SEARCH APP. THIS IS AN AWESOME FEATURE FOR  
15          ANDROID AND ITS REMOVAL BACK IN AUGUST WAS DISHEARTENING.  
16          SEEING IT RETURN IS WONDERFUL."

17           FINALLY, YOU'LL SEE MORE OF THESE IN TRIAL, BUT FINALLY  
18          FOR MY OPENING, I WANT TO SHOW YOU THIS DOCUMENT, WHICH IS  
19          PLAINTIFF'S EXHIBIT 147. THIS IS A 2008 DOCUMENT THAT ASSESSED  
20          THE IMPACT OF THE IPHONE 3G ON THE U.S. MARKET.

21           ON PAGE 2, AS ITS OVERALL CONCLUSION, SAMSUNG NOTED "3G  
22          IPHONE IS REDEFINING THE U.S. MARKET DYNAMICS."

23           IT CONCLUDES, "WHILE TRADITIONAL OEM'S," WHICH STANDS FOR  
24          ORIGINAL EQUIPMENT MANUFACTURERS, "ARE BUSY FIGHTING EACH OTHER  
25          IN THE FEATURE PHONE SPACE" YOU HEARD THAT WAS THE BUTTON

1 PHONES, "IN THE FEATURE PHONE SPACE APPLE IS BUSY MAKING THE  
2 CATEGORY OBSOLETE."

3 THIS IS A SAMSUNG DOCUMENT.

4 ON PAGE 9 THEY SAID "SAMSUNG STRENGTHS DO NOT TRANSLATE  
5 WELL TO TOUCH."

6 THEY CONCLUDE -- IT'S INTERESTING, YOU WILL HEAR FROM  
7 SAMSUNG, "WE'RE SUCCESSFUL BECAUSE WE MAKE A HUNDRED DIFFERENT  
8 KINDS OF PHONES AND APPLE ONLY MAKES ONE," ET CETERA.

9 BUT IN THEIR INTERNAL DOCUMENT, THEY SAY "IN THE TOUCH  
10 SEGMENT DIFFERENTIATED ID'S" IN THE INDUSTRIAL DESIGNS "HAVE  
11 LITTLE UTILITY. SAMSUNG'S COMPETITIVE ADVANTAGE TO PROVIDE A  
12 VARIETY OF UNIQUE ID'S" FOR INDUSTRIAL DESIGNS "SERVES IT VERY  
13 WELL IN THE FEATURE PHONE SEGMENT. FOR TOUCH, THIS CAPABILITY  
14 IS ALMOST IRRELEVANT."

15 I WANT TO SHOW YOU THEIR CONCLUSION, WHICH IS PARTICULARLY  
16 COMPELLING FOR THIS CASE, AND THAT'S ON PAGE 13.

17 THE CONCLUSION AT THE TOP SAID "SOFTWARE IS THE NEW VALUE  
18 DRIVER."

19 AND THEY SAY, "WHAT MAKES THE IPHONE UNIQUE IS SOFTWARE  
20 (APPLICATIONS) AND SERVICES, BEAUTIFUL HARDWARE IS JUST A  
21 BONUS."

22 IN THIS CASE, AS YOU HEAR LAWYERS, AS YOU HEAR THE  
23 WITNESSES FOR SAMSUNG GET UP THERE AND SAY OUR SOFTWARE PATENTS  
24 ARE NOT VALUABLE, THEY'RE TRIVIAL, THEY DON'T MAKE A  
25 DIFFERENCE, CUSTOMERS DON'T CARE, REMEMBER WHAT THEIR INTERNAL

1 DOCUMENTS SAID.

2 THEY CHOSE TO USE OUR INVENTIONS BECAUSE THEY BELIEVED  
3 THOSE INVENTIONS WERE FUNDAMENTAL TO HAVING A SUCCESSFUL  
4 PRODUCT.

5 ALSO KEEP IN MIND THAT WHILE EVIDENCE OF COPYING MAKES  
6 INFRINGEMENT MORE LIKELY, AND HELPS SHOW SAMSUNG'S STATE OF  
7 MIND -- YOU'VE HEARD ABOUT WILLFULNESS -- WE DON'T HAVE TO  
8 PROVE COPYING TO PROVE INFRINGEMENT. ALL WE NEEDED TO SHOW IS  
9 THAT SAMSUNG IS ACTUALLY USING OUR PATENTED INVENTIONS.

10 SO LET'S TALK ABOUT INFRINGEMENT. IN THIS CASE, YOU WILL  
11 MEET SOME OF THE INVENTORS WHO CREATED THESE FEATURES.

12 FRANKLY, WE'RE ON A TIME CLOCK. I THINK THE JUDGE MENTIONED  
13 THAT TO YOU. YOU WILL NOT SEE ALL OF THE INVENTORS, BUT YOU  
14 WILL SEE SOME OF THEM.

15 BUT WE WILL ALSO BRING EXPERT EVIDENCE THAT SAMSUNG  
16 INFRINGES EACH OF THE FIVE CLAIMS THAT WE'RE ASSERTING.

17 YOU WILL HEAR FROM PROFESSOR ANDREW COCKBURN, WHO WILL  
18 TALK ABOUT THE '172 AND '721 PATENTS. PROFESSOR COCKBURN IS AN  
19 EXPERT IN SOFTWARE RELATING TO HUMAN COMPUTER INTERFACES.

20 AGAIN, WE WON'T TALK ABOUT INFRINGEMENT OF THE '172  
21 BECAUSE SAMSUNG INFRINGES AND THAT'S ALREADY BEEN DETERMINED.

22 PROFESSOR COCKBURN WILL WALK US THROUGH THE SLIDE TO  
23 UNLOCK PATENT AND SHOW HOW EASY IT IS TO USE IN THE SAMSUNG  
24 DEVICES, HOW IT IS USED IN THE SAMSUNG DEVICES.

25 LET'S LOOK AT THIS VIDEO.

1           THIS IS ONE EXAMPLE OF THE WAY SAMSUNG HAS IMPLEMENTED  
2           APPLE'S SLIDE TO UNLOCK TECHNOLOGY. THIS IS AN ACCUSED ADMIRE  
3           PHONE. THEY ALL HAVE THESE TITLES WHICH WE'RE GOING TO HAVE TO  
4           PLAY WITH, BUT THIS IS THE ADMIRE PHONE.

5           ON THE LOCK SCREEN -- I'M SHOW YOU THE VIDEO IN A MINUTE.  
6           LET ME TELL YOU WHAT HAPPENS. ON THE LOCK SCREEN, THERE'S A  
7           GREEN PADLOCK ICON ON THE LEFT-HAND SIDE OF THE PHONE. WHEN  
8           YOU ARE READY TO UNLOCK THE PHONE, YOU TOUCH THAT GREEN PADLOCK  
9           ICON. THE ICON ON THE RIGHT SLIDE OF THE SCREEN SLIDES OUT OF  
10          VIEW AND A SMALL DOT APPEARS IN ITS PLACE. YOU SUPPLIED THE  
11          ICON OVER TO THE DOT AND THAT UNLOCKS THE PHONE.

12          (A VIDEOTAPE WAS PLAYED IN OPEN COURT OFF THE RECORD.)

13          MR. MCELHINNY: DR. TODD MOWRY WILL TALK ABOUT THE  
14          '647 PATENT. PROFESSOR MOWRY IS A PROFESSOR FROM CARNEGIE  
15          MELLON UNIVERSITY, AGAIN, AN EXPERT IN HIS FIELD.

16          HERE IS AN EXAMPLE OF HOW SAMSUNG HAS IMPLEMENTED THE  
17          QUICK LINKS TECHNOLOGY IN THE '647 PATENT INTO ITS PRODUCTS.  
18          WE'RE GOING TO SHOW YOU WHAT'S CALLED THE MESSAGING APPLICATION  
19          IN THE SAMSUNG EPIC 4G PHONE.

20          SO YOU'LL SEE HERE IN THIS VIDEO THAT THE USER HAS  
21          RECEIVED A TEXT MESSAGE WITH A PHONE NUMBER AND AN E-MAIL  
22          ADDRESS. WHEN THE USER SELECTS THE PHONE NUMBER, A POP-UP MENU  
23          WITH VARIOUS ACTIONS APPEARS. THE USER CAN SELECT ONE OF THOSE  
24          ACTIONS, SUCH AS CALLING THE NUMBER, AND THE PHONE APPLICATION  
25          COMES UP AUTOMATICALLY TO MAKE THE CALL.

1 AND, FINALLY, DR. ALEX SNOEREN WILL PRESENT THE '959  
2 UNIVERSAL SEARCH PATENT AND THE '414 BACKGROUND SYNC PATENT.  
3 DR. SNOEREN IS A PROFESSOR OF COMPUTER SCIENCE AND ENGINEERING  
4 AT U.C. SAN DIEGO.

5 THIS IS A VIDEO FOR THE '959 PATENT, AGAIN, USING THE  
6 EPIC 4G PHONE. THIS IS THE USER -- HOW UNIVERSAL SEARCH WORKS  
7 ON THE SAMSUNG PHONE.

8 (VIDEO PLAYING.)

9 MR. MCELHINNY: A USER IS GOING TO LAUNCH A GOOGLE  
10 SEARCH APPLICATION FROM THE HOME SCREEN, AND YOU CAN SEE THE  
11 USER START TYPING IN A QUERY, AND HE PUT IN THE LETTERS APP.

12 THE SEARCH IMMEDIATELY RETURNS BOTH LOCAL RESULTS, JOHN  
13 APPLESEED COMES FROM THE PHONE'S CONTACTS APPLICATION, AND  
14 INTERNET RESULTS, AND YOU CAN SEE APPLE AND APPLE STORE HERE.

15 THE USER THEN SELECTS ONE OF THE INTERNET RESULTS, APPLE,  
16 TO LAUNCH THAT RESULT IN THE BROWSER.

17 UNIVERSAL SEARCH ON A SAMSUNG PHONE.

18 AND, FINALLY -- AND I APOLOGIZE, THIS TAKES A MINUTE.  
19 WE'RE GOING TO BE TALKING ABOUT BACKGROUND SYNC, AND IF WE  
20 THINK ABOUT THE TECHNOLOGY ON BACKGROUND SYNC, A MESSAGE HAS TO  
21 GO FROM THE PHONE TO A SERVER AND THEN BACK TO ANOTHER PHONE.  
22 SO IT'S GOING TO TAKE A MINUTE FOR THAT SYNCING TO HAPPEN, BUT  
23 YOU'LL SEE IT.

24 ON THE LEFT WE'VE GOT LARRY AND ON THE RIGHT WE'VE GOT  
25 AARON. BOTH OF THEM HAVE GMAIL ACCOUNTS. SO THE E-MAILS SENT

1 TO THEM GO FROM THEIR PHONES TO THE GMAIL SERVER BEFORE SYNCING  
2 TO THE SMARTPHONE THAT YOU SEE HERE. SO WE SEE AARON TYPING AN  
3 E-MAIL. MEANWHILE, LARRY SENDS AARON A MESSAGE.

4 AS AARON CONTINUES TO TYPE, YOU WILL SEE PRETTY SOON AFTER  
5 IT GOES TO THE SERVER AND COMES BACK, AT THE TOP LEFT OF  
6 AARON'S PHONE THE NAME LARRY ANDERSON WILL POP-UP, SHOWING THAT  
7 AARON RECEIVES A NEW MESSAGE WHILE HE WAS USING THE PHONE.

8 WE'VE FROZEN IT THERE SO YOU CAN SEE THE NAME COMING UP  
9 HERE. WE KNOW WHILE HE WAS USING THE PHONE TYPING, SYNCING WAS  
10 GOING ON IN THE BACKGROUND BECAUSE THE MESSAGE CAME AND THE  
11 PHONE WAS ABLE TO SYNC THE INCOMING MESSAGE WITHOUT ANY  
12 INTERRUPTION OR DELAY.

13 LADIES AND GENTLEMEN, WE'RE GOING TO MOVE A LITTLE BIT TO  
14 NUMBERS. BUT YOU'RE GOING TO HEAR IN THIS CASE THAT SAMSUNG  
15 HAS SOLD MORE THAN 37 MILLION INFRINGING PHONES AND TABLETS IN  
16 THE UNITED STATES. 37 MILLION.

17 SO WHAT IS SAMSUNG GOING TO SAY IN ITS DEFENSE?

18 OBVIOUSLY WE DON'T KNOW EXACTLY. THEY HAVEN'T TOLD ME  
19 EXACTLY WHAT THEY'RE GOING TO SAY.

20 BUT IN GENERAL YOU CAN EXPECT TO HEAR THE FOLLOWING  
21 THINGS:

22 THEY'RE GOING TO SAY THAT THEY DON'T INFRINGE; THEY'RE  
23 GOING TO SAY THAT THE EVIDENCE THAT THEY COPIED THE IPHONE IS  
24 SIMPLY LAWFUL COMPETITION, LOOKING AT COMPETITOR'S PRODUCT.

25 BUT YOU WILL HAVE THE DOCUMENTS I SHOWED YOU. YOU WILL

1 HAVE OTHER DOCUMENTS, AND YOU WILL HAVE THE TESTIMONY OF  
2 EXPERTS SO YOU WILL DETERMINE THAT INFRINGEMENT DISPUTE.

3 SAMSUNG IS ALSO GOING TO SAY THAT EVEN IF THEY DO  
4 INFRINGE, IT DOESN'T REALLY MATTER BECAUSE APPLE ISN'T USING  
5 SOME OF THESE INVENTIONS IN ITS PRODUCTS.

6 THE FIRST PROBLEM WITH THAT ARGUMENT IS A LITTLE BIT  
7 OBVIOUS. I MEAN, YOU CAN'T TAKE SOMEONE'S PROPERTY BECAUSE  
8 THEY'RE NOT USING IT. SO IT'S SORT OF A PROBLEM AT THE  
9 BEGINNING.

10 BUT IF YOU THINK ABOUT IT, IT HAS AN EVEN MORE DEEP  
11 SIGNIFICANCE BECAUSE WHEN SAMSUNG HAS TAKEN AN APPLE INVENTION  
12 AND THEN INTRODUCED IT INTO THE MARKETPLACE, APPLE -- OR  
13 SAMSUNG HAS BEEN TELLING THE MARKETPLACE THAT IT'S ITS  
14 INVENTION AND THAT IT'S ITS CREATIVITY AND IT'S ALLOWED TO GIVE  
15 THE IMPRESSION THAT IT ISN'T FROM APPLE BECAUSE IT IS USING  
16 THESE APPLICATIONS THAT APPLE DOESN'T USE, EVEN THOUGH IT WAS  
17 APPLE'S ENGINEERS WHO ACTUALLY ARE MAKING THAT CONTRIBUTION TO  
18 THE IMPROVEMENT OF THIS WORLD.

19 THEY USE OUR INVENTIONS TO COMPETE AGAINST US.

20 YOU'RE ALSO GOING TO HEAR SAMSUNG POINT THE FINGER AT  
21 GOOGLE. THEY'RE GOING TO SAY, HEY, THIS IS ANDROID SOFTWARE.  
22 SOME OF THESE PATENTS INVOLVE SOFTWARE. AND YOU ACTUALLY HEARD  
23 THIS A LITTLE BIT IN THE VOIR DIRE YESTERDAY. THIS IS ANDROID  
24 SOFTWARE. WE GET IT THROUGH GOOGLE.

25 BUT DON'T, DON'T BE MISLED BY THAT. THIS CASE IS NOT

1 ABOUT GOOGLE.

2 AS YOU SAW FROM THESE DOCUMENTS AND AS YOU'LL SEE FROM  
3 MORE, IT IS SAMSUNG THAT HAS MADE THE DECISION TO COPY THESE  
4 FEATURES. IT IS SAMSUNG, NOT GOOGLE, THAT CHOSE TO PUT THESE  
5 FEATURES INTO ITS PHONES.

6 AND IT IS SAMSUNG, NOT GOOGLE, THAT IS SELLING THESE  
7 PHONES FOR A PROFIT.

8 AND, FINALLY, IT IS SAMSUNG THAT HAS MADE THE CORPORATE  
9 DECISION TO KEEP ON INFRINGING APPLE'S INTELLECTUAL PROPERTY.

10 NEXT, SAMSUNG IS GOING TO SAY EVEN IF THEY DID COPY AND  
11 EVEN IF THEY DO INFRINGE, THAT'S OKAY BECAUSE EVERY ONE, EACH  
12 OF THESE FIVE PATENTS IS INVALID. THEY'RE GOING TO TRY TO  
13 CONVINCE YOU THAT THE PATENT AND TRADEMARK OFFICE MADE A  
14 MISTAKE NOT ONCE, NOT TWICE, BUT ON EVERY ONE OF THE FIVE  
15 PATENTS THAT WE CHOSE TO ASSERT IN THIS CASE.

16 AS YOU HEARD FROM THE VIDEO, TO PROVE THAT DEFENSE,  
17 SAMSUNG HAS A HIGHER BURDEN OF PROOF, WHICH JUDGE KOH WILL  
18 EXPLAIN TO YOU AT THE END OF THE TRIAL.

19 AND THEN SAMSUNG IS GOING TO SAY, OKAY, EVEN IF WE DID  
20 COPY, AND EVEN IF WE DID INFRINGE VALID PATENTS, IT'S NOT  
21 REALLY A VERY BIG DEAL BECAUSE THESE INVENTIONS ARE TRIVIAL.  
22 THEY'RE NOT IMPORTANT. AND THERE'S A LOT OF DIFFERENT WAYS  
23 THAT WE COULD HAVE DONE THE SAME THING THAT AREN'T COVERED BY  
24 YOUR PATENTS.

25 THIS HAS A TECHNICAL NAME. THE LAWYERS CALL IT



1 ACCEPTABLE, NON-INFRINGEMENTALTERNATIVES. I CALL IT THE  
2 SHOULD, COULDA, WOULD, LAW DEFENSE, BUT THAT'S NOT LEGAL.

3 BUT WHAT THEY'LL SAY IS EVEN THOUGH YOU'LL SEE DOCUMENT  
4 AFTER DOCUMENT FROM SAMSUNG SAYING IT WAS THESE FEATURES THAT  
5 WERE IMPORTANT TO CONSUMERS AND EVEN THOUGH SAMSUNG CHOSE TO  
6 COPY THESE FEATURES, NOT SOME OTHER WAY, THAT BECAUSE THEY  
7 COULD HAVE DONE IT SOME OTHER WAY, MAYBE THEY SHOULD HAVE DONE  
8 IT SOME OTHER WAY, MAYBE THEY CAN DO IT SOME OTHER WAY, THESE  
9 PATENTS HAVE NO VALUE.

10 BUT THE TRUTH IS, AND YOU CAN TELL FROM THE DOCUMENTS,  
11 THAT IF SAMSUNG HAD EVEN SUSPECTED FOR A MOMENT THAT A JURY  
12 WOULD BE ORDERING THEM TO PAY A FAIR PRICE FOR USING OUR  
13 INVENTIONS, THEY MIGHT HAVE MADE DIFFERENT DECISIONS. BUT THEY  
14 DIDN'T, BECAUSE THEY WENT WITH WHAT THEY THOUGHT WOULD SELL  
15 THEIR PRODUCTS.

16 SO, FINALLY, YOU WILL HEAR EVIDENCE ABOUT DAMAGES. I  
17 THINK ACTUALLY THIS PART WILL MAKE MORE -- IF ANYTHING I'VE  
18 SAID TO YOU MAKES SENSE, I'M GLAD ABOUT THAT. BUT I THINK THIS  
19 PART WILL MAKE MORE SENSE AFTER YOU'VE HEARD ALL THE EVIDENCE,  
20 BUT I WANT TO GIVE YOU A HIGH OVERVIEW OF WHAT'S GOING TO  
21 HAPPEN.

22 IF YOU FIND INFRINGEMENT, AND AS I MENTIONED, WE ALREADY  
23 KNOW THAT AT LEAST ONE OF THESE PATENTS IS INFRINGED, AND IF  
24 YOU DECIDE THAT THE PATENT AND TRADEMARK OFFICE ACTUALLY WAS  
25 CORRECT WHEN IT ISSUED THESE PATENTS, THEN YOU WILL BE CALLED

1 UPON TO DECIDE THE ISSUE OF DAMAGES, AND YOU'RE GOING TO HEAR  
2 TESTIMONY ABOUT TWO DIFFERENT KINDS OF DAMAGES.

3 THE FIRST ONE IS ACTUALLY PRETTY STRAIGHTFORWARD. IT'S  
4 CALLED LOST PROFITS. WE WILL PRESENT EVIDENCE TO YOU THAT IT  
5 IS PROPER THAT IF SAMSUNG HAD NOT BEEN ABLE TO SELL BECAUSE IT  
6 COULDN'T USE OUR PROPERTY, IF IT HAD NOT BEEN ABLE TO SELL ITS  
7 37 MILLION INFRINGING PHONES AND TABLETS, THAT SOME OF THOSE  
8 CONSUMERS, SOME OF THEM WHO COULD NOT BUY AN INFRINGING PHONE  
9 WOULD HAVE, INSTEAD, PURCHASED AN APPLE PRODUCT.

10 AND IF YOU BELIEVE THAT, YOU WILL HEAR THAT WE'RE ENTITLED  
11 TO RECOVER LOST PROFITS ON THE SALES AND WE WILL PRESENT THAT  
12 NUMBER TO YOU.

13 SAMSUNG IS GOING TO TELL YOU THAT NOT ONE, I'M NOT  
14 EXAGGERATING HERE, THEY'RE GOING TO TELL YOU THAT NOT ONE OF  
15 THOSE 37, OVER 37 MILLION BUYERS WOULD NOT HAVE BOUGHT AN APPLE  
16 PRODUCT, EVEN IF THEY COULDN'T GET THEIR SAMSUNG PRODUCT.

17 FRANKLY, WE THOUGHT WE WERE BEING CONSERVATIVE BECAUSE OUR  
18 EXPERT IS GOING TO TELL YOU IT'S A NUMBER UNDER 10 PERCENT.

19 BUT SAMSUNG SAYS NOT ONE. NOT ONE.

20 THIS IS GOING TO BE ANOTHER SITUATION WHERE WHAT SAMSUNG  
21 TELLS YOU HERE WILL NOT MATCH WHAT YOU SEE IN THEIR INTERNAL  
22 DOCUMENTS. FOR EXAMPLE, YOU'LL SEE PLAINTIFF'S EXHIBIT 154.  
23 THIS IS A DOCUMENT THAT WAS CREATED BY -- YOU HEARD ONE OF THE  
24 SUBSIDIARIES, SAMSUNG TELECOMMUNICATIONS AMERICA. IT WAS  
25 CALLED "2011 SUMMARY AND LESSONS LEARNED" AND A BUSINESS

1 FORECAST FOR 2012.

2 AND ON PAGE 7 WHAT THEY TELL US, THEIR "HIGH LEVEL  
3 INITIATIVES - BEAT APPLE." THEY SAY "BEATING APPLE IS A NUMBER  
4 ONE PRIORITY (EVERYTHING MUST BE IN THE CONTEXT OF BEATING  
5 APPLE.)"

6 AND THEY SAY "THE THREAT FROM APPLE IS EXTREMELY REAL AND  
7 URGENT, UP TO A 12.5 MILLION SELLING IN THE FOURTH QUARTER  
8 VENDOR."

9 AND IN THE NEXT YEAR, IN A TOP SECRET REPORT FROM SAMSUNG  
10 TELECOMMUNICATIONS AMERICA BACK TO HEADQUARTERS, YOU'LL SEE  
11 THIS DOCUMENT WHERE THEY TALK ABOUT A PARADIGM SHIFT, AND  
12 YOU'LL SEE PAGE 156 WHERE SAMSUNG DESCRIBED THE U.S. MARKET AS  
13 "BECOMING A TWO HORSE RACE BETWEEN APPLE AND SAMSUNG."

14 DESPITE THESE INTERNAL DOCUMENTS, DESPITE CALLING IT A  
15 "TWO HORSE RACE" AND DESPITE SAYING THAT THE THREAT FROM APPLE  
16 IS, TO USE THEIR WORDS, "EXTREMELY URGENT AND REAL," THEY WILL  
17 STAND HERE AND TELL YOU, THEIR WITNESSES WILL TELL YOU UNDER  
18 OATH THAT IF THOSE 38 MILLION PHONES HADN'T BEEN ON THE MARKET,  
19 NOT ONE OF THE PURCHASERS WOULD HAVE PURCHASED AN APPLE  
20 PRODUCT.

21 THAT'S LOST PROFITS. LESS THAN 10 PERCENT OF THE SALES.

22 THE SECOND TYPE OF DAMAGES IS, FRANKLY, A LITTLE MORE  
23 COMPLICATED.

24 FOR THE SALES, FOR THE OTHER 90 PERCENT OF THIS 38 MILLION  
25 FOR WHICH WE DO NOT GET LOST PROFITS, THE LAW SAYS, I BELIEVE

1 THE JUDGE WILL INSTRUCT YOU AT THE END OF THE CASE THAT WE'RE  
2 ENTITLED TO RECOVER -- YOU HEARD IT ON THE VIDEO -- WHAT IS  
3 CALLED A REASONABLE ROYALTY.

4 AND AS THEY MENTIONED ON THE VIDEO, YOU THINK A REASONABLE  
5 ROYALTY IS THE SAME AS RENT, YOU USE SOMEONE'S REAL PROPERTY,  
6 YOU PAY THEM RENT. IF YOU USE SOMEONE'S INTELLECTUAL PROPERTY,  
7 YOU PAY THEM A REASONABLE ROYALTY.

8 SO THE CONCEPT THAT SOMEBODY WOULD PAY RENT FOR USING  
9 THESE, THAT'S NOT HARD.

10 BUT THE TRICKY QUESTION IS HOW DO YOU, AS A JURY, DECIDE  
11 WHAT THAT REASONABLE ROYALTY SHOULD BE. AND THAT'S OBVIOUSLY A  
12 REALLY IMPORTANT QUESTION.

13 AS SHE TOLD YOU, AT THE END OF THE TRIAL JUDGE KOH WILL  
14 GIVE YOU THE ACTUAL INSTRUCTIONS.

15 BUT IN A BROAD SENSE SHE WILL TELL YOU, I BELIEVE, TO USE  
16 SOMETHING WHICH IS CALLED A HYPOTHETICAL NEGOTIATION, THE  
17 PROCESS BY WHICH YOU GET TO THE ROYALTY IS YOU CREATE A  
18 NEGOTIATION THAT NEVER HAPPENED AND PROBABLY NEVER WOULD HAVE  
19 HAPPENED IN THE REAL WORLD.

20 SO WHAT YOU DO IS YOU PUT APPLE AND SAMSUNG IN A ROOM AND  
21 YOU PUT YOURSELF IN THEIR HEADS AND YOU FORCE THEM TO NEGOTIATE  
22 OVER THE VALUE OF THESE FIVE PATENTS.

23 AND YOU WILL HEAR TESTIMONY AND AT THE END OF THAT  
24 TESTIMONY, YOU DECIDE WHERE THEY WOULD HAVE ENDED UP IN THAT  
25 NEGOTIATION, AND THAT'S THE REASONABLE ROYALTY.

1 SO WE'RE GOING TO PRESENT EVIDENCE TO HELP YOU WITH THAT  
2 PROCESS. YOU WILL GET THE EVIDENCE OF MR. JOHN HAUSER.  
3 MR. HAUSER IS ONE OF THE WORLD'S EXPERTS IN THE AREA OF  
4 CONDUCTING SURVEYS TO DETERMINE HOW CONSUMERS VALUE OPTIONS  
5 THEY MAY BE GIVEN IN PARTICULAR PRODUCTS.

6 IN THIS CASE, DR. HAUSER, CONDUCTING ONE OF THE SURVEYS,  
7 IT'S CALLED A CONJOINT SURVEY, AND YOU'LL GET A LOT OF  
8 EXPLANATION ABOUT THAT, TO DETERMINE THE DEGREE TO WHICH  
9 CONSUMERS VALUE THE FIVE SPECIFIC FEATURES THAT WE'RE TALKING  
10 ABOUT IN THIS CASE.

11 WE WILL ALSO PRESENT THE TESTIMONY OF DR. CHRIS VELLTURO.  
12 DR. VELLTURO IS AN EXPERT IF IN THE FIELD OF CALCULATING  
13 DAMAGES IN INTELLECTUAL PROPERTY CASES, PARTICULARLY IN THIS  
14 PROCESS OF CARRYING ON A HYPOTHETICAL NEGOTIATION.

15 WHAT I WANT YOU TO UNDERSTAND NOW, SO THAT IT WILL HELP  
16 YOU WITH THE EVIDENCE, IS THAT THIS NEGOTIATION WOULD HAVE  
17 TAKEN PLACE IN AUGUST OF 2011. AND IT WOULD HAVE BEEN THAT  
18 DATE BECAUSE THAT'S THE DATE ON WHICH SAMSUNG FIRST INFRINGED  
19 THE '647, '414, AND '959 PATENTS.

20 AND IT'S A CRITICALLY IMPORTANT DATE BECAUSE THE EVIDENCE  
21 WILL BE THAT THE PHONES IN THIS CASE REPRESENTED THE SECOND  
22 WAVE OF PRODUCTS THAT SAMSUNG HAD STARTED TO SELL IN THE  
23 UNITED STATES.

24 APPLE HAD ALREADY SEEN THE EFFECT OF THE FIRST WAVE, AND  
25 APPLE HAD FIGURED OUT SAMSUNG'S STRATEGY OF COPYING THE IPHONE

1 AND SELLING ITS OWN COPIES AT LOWER PRICES.

2 SO THE EVIDENCE WILL BE THAT IN AUGUST OF 2011, APPLE  
3 WOULD HAVE BROUGHT THE FOLLOWING KNOWLEDGE TO THE HYPOTHETICAL  
4 NEGOTIATION: IT WOULD HAVE BEEN FULLY AWARE THAT SAMSUNG HAD  
5 ADOPTED A STRATEGY OF COPYING ITS PRODUCTS; IT WOULD HAVE KNOWN  
6 THAT SAMSUNG WAS UNDERSELLING IT IN THE MARKETPLACE; IT WOULD  
7 HAVE KNOWN THAT LARGE NUMBERS OF CONSUMERS WERE PLANNING, IN  
8 THAT YEAR AND THE YEAR FOLLOWING, TO MAKE THEIR FIRST PURCHASE  
9 OF A SMARTPHONE; AND APPLE WOULD HAVE BELIEVED, FROM WHAT IT  
10 HAD SEEN, THAT SAMSUNG DID NOT HAVE THE ABILITY TO CREATE ITS  
11 OWN DESIGNS THAT COULD HAVE COMPETED.

12 AND ON THE OTHER SIDE OF THAT NEGOTIATING TABLE WILL BE  
13 SAMSUNG. YOU WILL KNOW WHAT THEY WOULD HAVE BEEN THINKING IN  
14 AUGUST 2011 BECAUSE YOU WILL HAVE SEEN THEIR INTERNAL  
15 DOCUMENTS.

16 THEY WOULD HAVE BEEN DEEPLY AWARE OF THEIR OWN CRISIS OF  
17 DESIGN; THEY WOULD HAVE KNOWN FROM THE DOCUMENT I SHOWED YOU,  
18 AND ABOUT FIVE OTHERS THAT YOU'RE GOING TO SEE, THAT THE  
19 DESIGNERS FELT THAT THEY HAD TO HAVE THESE FIVE SPECIFIC  
20 FEATURES IN ORDER TO BE ABLE TO COMPETE AGAINST APPLE; AND THEY  
21 WOULD HAVE BEEN THINKING THAT COMPETING AGAINST APPLE WAS THEIR  
22 NUMBER 1 PRIORITY.

23 SO UNDER THESE CIRCUMSTANCES, IN THIS NEGOTIATING ROOM, WE  
24 THINK YOU WILL AGREE THAT SAMSUNG WOULD NOT HAVE BEEN -- THAT  
25 APPLE WOULD NOT HAVE BEEN WILLING TO LICENSE THESE PATENTS

1 CHEAPLY, IF IT WOULD HAVE BEEN WILLING TO LICENSE THEM AT ALL.

2 DR. VELLTURO WILL GIVE YOU MUCH MORE DETAIL ABOUT THIS,  
3 BUT HE'LL EXPLAIN TO YOU THAT IN HIS OPINION UNDER THESE  
4 CIRCUMSTANCES APPLE WOULD HAVE ASKED FOR AN AVERAGE ROYALTY OF  
5 ABOUT \$33 PER PHONE, \$40 AT THE TOP END FOR EVERY PHONE THAT  
6 INFRINGED ALL FIVE OF THE PATENTS.

7 GIVEN THE YEARS OF RESEARCH, GIVEN THE RISK THAT APPLE HAD  
8 TAKEN, GIVEN THE SUCCESS OF THESE FEATURES IN THE MARKETPLACE,  
9 AND GIVEN THE IMPORTANCE OF THE IPHONE TO APPLE'S SUCCESS,  
10 APPLE WOULD NOT HAVE AGREED TO LICENSE THESE PATENTS TO THIS  
11 COMPANY FOR LESS.

12 BUT BECAUSE YOU'RE GOING TO BE MULTIPLYING THIS AVERAGE  
13 TIMES MILLIONS AND MILLIONS OF INFRINGING PHONES, YOU PROBABLY  
14 HAVE ALREADY RECOGNIZED BUT YOU WILL CERTAINLY GET THERE, THAT  
15 ALTHOUGH THE ROYALTY PER PHONE IS REASONABLE, THE TOTAL DAMAGES  
16 THAT WE'RE GOING TO ASK YOU TO AWARD IS HIGH. IT'S OVER \$2  
17 BILLION.

18 BUT I HOPE AT THE END OF THE TRIAL YOU WILL UNDERSTAND  
19 THAT THE REASON THAT THE DAMAGES IN THIS CASE ARE HIGH IS  
20 BECAUSE THE SCOPE OF SAMSUNG'S INFRINGEMENT HAS BEEN MASSIVE.

21 IT IS NOT A SECRET THAT APPLE IS PROUD OF ITS INTELLECTUAL  
22 PROPERTY. IT'S NOT A SECRET THAT IT WAS THE ABILITY OF APPLE'S  
23 DESIGNERS AND ENGINEERS TO CREATE AND INVENT THAT HAS BEEN  
24 RESPONSIBLE FOR MAKING APPLE, WHAT CAN BE CALLED YESTERDAY THE  
25 BIG COMPANY, THE SUCCESSFUL COMPANY, THE WEALTHY COMPANY THAT

1 IT IS TODAY, THAT WAS NOT A FOREORDAINED CONCLUSION. THEY GOT  
2 THERE THROUGH HARD WORK, THROUGH INTRODUCING PRODUCTS THAT THE  
3 WORLD HAD NOT SEEN, AND BY BEING RIGHT IN THEIR DESIGN CHOICES.

4 AND IT WILL NOT BE A SECRET, AFTER YOU'VE HEARD THE  
5 EVIDENCE, THAT APPLE HAS BEEN HURT VERY, VERY BADLY BY THE  
6 INFRINGEMENT STRATEGY THAT SAMSUNG INTENTIONALLY ADOPTED IN  
7 THIS CASE AND WHICH IT HAS USED SO EFFECTIVELY TO CARVE OUT ITS  
8 CURRENT PLACE IN THE MARKETPLACE.

9 I SPENT A MINUTE LAYING OUT FOR YOU WHAT SAMSUNG WAS GOING  
10 TO SAY IN THIS CASE, BUT I LEFT OUT ONE PARTICULARLY CYNICAL  
11 ARGUMENT THAT THEY INTEND TO MAKE, AND FOR A PREVIEW OF THAT  
12 ARGUMENT, I'M GOING TO GIVE YOU BACK TO MY GOOD FRIEND  
13 BILL LEE.

14 THE COURT: ALL RIGHT. TIME IS 11:27. YOU HAVE  
15 UNTIL 11:49.

16 MR. LEE: 22 MINUTES.

17 THE COURT: YES.

18 MR. LEE: THANK YOU, YOUR HONOR.

19 (MR. LEE GAVE HIS OPENING STATEMENT ON BEHALF OF  
20 PLAINTIFF.)

21 MR. LEE: GOOD MORNING, LADIES AND GENTLEMEN. GOOD  
22 TO SEE YOU AGAIN.

23 MR. MCELHINNY HAS JUST DISCUSSED WITH YOU THE EVIDENCE  
24 THAT WILL DEMONSTRATE THAT IT WAS APPLE THAT INVESTED,  
25 INNOVATED AND TOOK THE RISK OF BRINGING TO MARKET REVOLUTIONARY



1 PRODUCTS, PRODUCTS THAT HAVE CHANGED THE WAY THAT WE  
2 COMMUNICATE WITH EACH OTHER ON A DAILY BASIS.

3 HE HAS ALSO DESCRIBED TO YOU THE EVIDENCE THAT  
4 DEMONSTRATES THAT SAMSUNG NOT ONLY INFRINGED ON APPLE'S  
5 INTELLECTUAL PROPERTY, BUT INTENTIONALLY COPIED THAT  
6 INTELLECTUAL PROPERTY TO GAIN A POSITION IN THE MARKETPLACE.

7 BUT AS HER HONOR EXPLAINED TO YOU, SAMSUNG HAS ALSO  
8 ASSERTED TWO PATENTS AGAINST APPLE. IN MY PORTION OF THE  
9 OPENING, IN LESS THAN 22 MINUTES, I'M GOING TO DESCRIBE TO YOU  
10 THOSE CLAIMS AGAINST APPLE.

11 AND LET ME BEGIN BY TELLING YOU A LITTLE BIT ABOUT THE  
12 THOSE PATENTS.

13 IN A FEW MINUTES, WE ANTICIPATE THAT SAMSUNG WILL TELL YOU  
14 THAT IT INVESTS ENORMOUS AMOUNTS IN RESEARCH AND DEVELOPMENT.

15 WE EXPECT THAT THEY'LL TELL YOU THAT THEY HAVE TENS OF  
16 THOUSANDS OF PATENTS.

17 BUT, LADIES AND GENTLEMEN, YOU WILL NOT HEAR ABOUT ONE OF  
18 THOSE PATENTS HERE. YOU WILL NOT HEAR ABOUT ONE PATENT THAT  
19 RESULTED FROM THE WORK OF ANY SAMSUNG ENGINEER.

20 YOU WILL NOT HEAR OF ONE PATENT THAT RESULTED FROM ANY  
21 WORK, ANY INNOVATION THAT SAMSUNG DID BY ITSELF.

22 AND WHY? BECAUSE FOR SMARTPHONES AND TABLETS, IT WAS  
23 APPLE THAT WAS THE INVENTOR, THE INNOVATOR. LATER IT WAS  
24 SAMSUNG THAT WAS THE INTENTIONAL FOLLOWER.

25 INSTEAD WHAT THE EVIDENCE WILL DEMONSTRATE TO YOU IS THIS:

1           IN AUGUST OF 2010, APPLE MET WITH SAMSUNG. AS  
2           MR. MCELHINNY HAS SAID, APPLE KNEW THAT SAMSUNG WAS COPYING.  
3           IT ASKED TO MEET WITH SAMSUNG.

4           AND IT SAID TO SAMSUNG, "YOU ARE COPYING OUR PRODUCTS,  
5           YOU'RE INFRINGING OUR PATENTS. STOP."

6           WE DIDN'T RUN OFF TO COURT. WE DID WHAT GROWNUPS SHOULD  
7           DO AND ASKED TO MEET AND SAID "WOULD YOU STOP?"

8           BUT SAMSUNG DIDN'T STOP COPYING. AS YOU WILL LEARN, THEY  
9           DIDN'T STOP INFRINGING.

10          INSTEAD, THEY KEPT ON DOING WHAT THEY HAD BEEN DOING,  
11          INTENTIONAL COPYING AS YOU'VE NOW SEEN FROM INTERNAL DOCUMENTS.

12          AND THEY DID TWO OTHER THINGS. HAVING BEEN ACCUSED OF  
13          INFRINGING AND COPYING, THEY WENT OUT AND BOUGHT TWO PATENTS,  
14          TWO PATENTS AFTER THEY'D BEEN ACCUSED OF INFRINGING. THOSE ARE  
15          THE TWO PATENTS THAT YOU'RE GOING TO HEAR ABOUT HERE, ONE  
16          CALLED THE '449 PATENT, ONE CALLED THE '239 PATENT, BOTH  
17          PURCHASED BY SAMSUNG FROM SOMEBODY ELSE AFTER APPLE HAD SAID  
18          "PLEASE STOP COPYING."

19          THESE ARE THE PATENTS THAT SAMSUNG WILL ASSERT, NOT  
20          PATENTS THAT COME FROM ITS OWN WORK.

21          NOW, AT THIS TRIAL YOU WILL NOT HEAR APPLE ARGUE, AS HER  
22          HONOR HAS SAID, THAT THESE TWO PATENTS ARE INVALID.

23          AS YOU LEARNED FROM THE VIDEO FROM THE FEDERAL JUDICIAL  
24          CENTER, THERE'S AN APPLICATION PROCESS WHERE EXAMINERS INVEST  
25          ENORMOUS AMOUNTS OF TIME IN REVIEWING THE APPLICATIONS FOR THE

1 PATENTS.

2 APPLE IS NOT GOING TO COME HERE AND SAY FOR THESE TWO  
3 PATENTS THAT SAMSUNG PURCHASED FROM A THIRD PARTY WHO  
4 PROSECUTED THE PATENTS THAT THE PATENT OFFICE MADE A MISTAKE.  
5 WE'RE NOT GOING TO SAY THAT.

6 ONLY SAMSUNG IS GOING TO TELL YOU THAT THE PATENT OFFICE  
7 MADE A MISTAKE. ONLY SAMSUNG IS GOING TO TELL YOU THEY MADE A  
8 MISTAKE FIVE TIMES. ONLY SAMSUNG IS GOING TO TELL YOU THAT  
9 THEY MADE A MISTAKE EVERY SINGLE TIME RELEVANT TO THIS CASE.

10 WHAT YOU WILL LEARN IS THE TWO PATENTS THAT SAMSUNG  
11 ASSERTS HERE, IN FACT, DESCRIBE TECHNOLOGY THAT IS VERY OLD AND  
12 VERY OBSOLETE.

13 IN FACT, ONE OF THESE PATENTS IS SO OLD THAT IT'S EXPIRED.  
14 DO YOU REMEMBER ON THE VIDEO TODAY WHEN THEY TOLD YOU THAT A  
15 PATENT HAS A TERM FOR 20 OR 17 YEARS? FOR ONE OF THOSE PATENTS  
16 THE 20 YEARS IS OVER.

17 WHY THEN DID SAMSUNG -- WHY THEN IS SAMSUNG ASSERTING  
18 THESE PATENTS AGAINST APPLE?

19 WELL, LET ME BEGIN WITH TWO REASONS THAT IT IS NOT.

20 THE EVIDENCE WILL DEMONSTRATE TO YOU THAT IT'S NOT BECAUSE  
21 SAMSUNG THOUGHT THESE PATENTS DESCRIBED IMPORTANT INVENTIONS.  
22 YOU WILL SEE NO SAMSUNG DOCUMENT THAT SAYS SO.

23 THE LAWYERS MAY TELL YOU SOMETHING DIFFERENT TODAY, BUT  
24 YOU WON'T SEE ANYTHING FROM SAMSUNG.

25 AND THE EVIDENCE WILL DEMONSTRATE THAT APPLE'S PRODUCTS,

1 THE RESULTS OF ITS INNOVATIONS AND INVENTIONS, ARE, IN FACT,  
2 VERY, VERY DIFFERENT FROM THESE OLD TECHNOLOGIES.

3 YOU WILL LEARN, AND YOU WILL HEAR FROM THE PEOPLE WHO DID  
4 THIS, THAT APPLE'S ENGINEERS INVESTED ENORMOUS AMOUNTS OF TIME  
5 AND EFFORT TO DEVELOP THE PRODUCTS THAT SAMSUNG ACCUSES OF  
6 INFRINGING.

7 YOU WILL LEARN, LADIES AND GENTLEMEN, THAT THERE IS NOT A  
8 SINGLE PIECE OF EVIDENCE, NOT A SINGLE SHRED OF EVIDENCE, THAT  
9 APPLE COPIED THESE PATENTS.

10 IN FACT, YOU WILL LEARN THAT THE PEOPLE WHO DID THE WORK  
11 FOR APPLE DIDN'T EVEN KNOW ABOUT THESE PATENTS WHEN THEY  
12 DESIGNED THE PRODUCTS THAT NOW HAVE BEEN ACCUSED OF  
13 INFRINGEMENT.

14 AND WE'LL ASK YOU AT THE END OF THE CASE TO COMPARE THAT  
15 TO WHAT YOU'VE SEEN FROM SAMSUNG.

16 SO WHY THEN DOES SAMSUNG ASSERT THESE PATENTS? THE  
17 ANSWER, THE EVIDENCE WILL DEMONSTRATE, IS IN THE DAMAGE CLAIM  
18 THAT SAMSUNG IS GOING TO OFFER YOU FOR THESE TWO PURCHASED  
19 PATENTS.

20 FOR THE '239 PATENT, THE PATENT THAT'S EXPIRED, THEY'RE  
21 ASKING YOU FOR AROUND \$6 MILLION.

22 FOR THE '449 PATENT, THE PATENT THAT HASN'T EXPIRED,  
23 THEY'RE GOING TO ASK YOU FOR \$158,000.

24 YOU WILL LEARN FROM THE EVIDENCE THAT THEY'VE HIRED  
25 MULTIPLE EXPERTS TO COME AND SIT IN THAT STAND AND TALK TO YOU

1 ABOUT THIS PATENT, AND THEY'VE PAID THEM MORE THAN THE AMOUNT  
2 OF MONEY THAT THEY'RE ASKING FOR IN DAMAGES.

3 WHY WOULD THEY DO THAT?

4 HERE'S WHAT THE EVIDENCE WILL SHOW: THE EVIDENCE WILL  
5 SHOW THAT THEY PURCHASED THESE PATENTS THAT THEY'RE ASSERTING  
6 WITH LOW DAMAGES CLAIMS BECAUSE THEY WANT YOU TO BELIEVE THAT  
7 PATENTS DON'T HAVE MUCH VALUE. THEY WANT YOU TO BELIEVE THAT  
8 PATENTS ARE NOT WORTH MUCH.

9 THEY ARE HOPING THAT WHEN YOU TURN THE 37 MILLION ACTS OF  
10 INFRINGEMENT, THAT YOU'LL COMPROMISE BECAUSE THE PATENTS ARE  
11 NOT WORTH MUCH.

12 THAT IS WHAT THE INFRINGER, THAT IS WHAT THE FOLLOWER,  
13 THAT IS WHAT THE COPIER WANTS YOU TO BELIEVE. PATENTS ARE NOT  
14 WORTH MUCH.

15 BUT THE INNOVATORS KNOW BETTER. THEY KNOW THE RISK THEY  
16 TOOK. THEY KNOW THE INVESTMENT OF TIME THEY MADE. THEY KNOW  
17 HOW DIFFICULT IT IS TO COME UP WITH AN IDEA TO MAKE A PRODUCT  
18 BETTER.

19 THEY KNOW WHAT AN INVENTION IS, AND THEY KNOW WHAT THE  
20 VALUE OF A PATENT THAT REALLY IS THE RESULT OF HARD WORKING  
21 INVENTIONS. IN CONTRAST TO THE VALUE OF THE PATENT ASSIGNED BY  
22 LAWYERS TO PATENTS PURCHASED FROM OTHERS.

23 SO LET ME QUICKLY TELL YOU ABOUT THE TWO PATENTS. THE  
24 FIRST ONE IS CALLED THE '449 PATENT, AS I SAID.

25 YOU WILL HEAR FROM AN APPLE ENGINEER NAMED TIM MILLET,

1 WHO'S ON THE LEFT-HAND SIDE OF THE SCREEN THERE, AND HE'S GOING  
2 TO EXPLAIN TO YOU THE VERY DIFFERENT AND NEW HARDWARE  
3 COMPONENTS IN APPLE'S PRODUCTS AND HOW THOSE COMPONENTS WORK.

4 YOU WILL ALSO HEAR FROM PROFESSOR JAMES STORER FROM  
5 BRANDEIS UNIVERSITY IN BOSTON, A RECOGNIZED EXPERT IN THE FIELD  
6 OF VIDEO COMPRESSION, AND HE, TOO, WILL EXPLAIN TO YOU HOW THE  
7 NEW TECHNOLOGIES IN THE APPLE PRODUCTS HAVE NOTHING TO DO WITH  
8 THE OLD TECHNOLOGIES OF THE '449 PATENT.

9 LET ME GIVE YOU A QUICK EXAMPLE. I'M GOING TO PUT ON THE  
10 SCREEN CLAIMS 25 AND 27 OF THE '449 PATENT.

11 WE'RE NOT GOING TO GO THROUGH IT ALL NOW. AS  
12 MR. MCELHINNY SAID, THE CLAIMS ARE WHAT ARE IMPORTANT.

13 CLAIMS 25 AND 27 TELL YOU WHAT THE INVENTION OF THE '449  
14 PATENT IS, AND YOU WILL SEE IT HAS NOTHING TO DO WITH  
15 SMARTPHONES. IT HAS NOTHING TO DO WITH A TABLET COMPUTER. IT  
16 HAS NOTHING TO DO WITH A MOBILE DEVICE.

17 INSTEAD IT DESCRIBES A DIGITAL CAMERA USING OLDER HARDWARE  
18 COMPONENTS, COMPONENTS THAT ARE NOT NECESSARY ANY LONGER TODAY.

19 SO LET ME GIVE YOU AN EXAMPLE.

20 ONE OF THE SPECIFIC REQUIREMENTS OF THE '449 PATENT IS  
21 THAT IT THE DIGITAL CAMERA DISPLAY A LIST, AND THAT THAT LIST  
22 BE IN A SEARCHABLE FORM.

23 THEY EVEN GAVE AN EXAMPLE OF WHAT THE LIST WOULD LOOK  
24 LIKE, AND THAT IS FIGURE 7 OF THE PATENT, WHICH IS ON THE  
25 SCREEN NOW. IT IS A LIST OF THE PHOTOS YOU'VE TAKEN. IT IS IN

1 A FORM THAT CAN BE SEARCHED.

2 THEY DID IT BECAUSE THE TECHNOLOGY OF THAT DAY WOULDN'T  
3 ALLOW YOU TO DISPLAY ALL OF THE PHOTOS YOU HAD TAKEN IN A WAY  
4 WHERE YOU COULD SIMPLY LOOK AT THEM AND SCROLL THROUGH THEM.

5 BUT THAT'S NOT WHAT THE IPHONE OR THE IPAD DO. THERE IS  
6 NO LIST. THERE IS NO SEARCH MODE.

7 INSTEAD, THE APPLE -- APPLE'S INVENTORS CAME UP WITH  
8 SOMETHING CALLED THE CAMERA ROLL, AND I'M GOING TO PUT THE  
9 CAMERA ROLL ON THE SCREEN RIGHT NOW ON THE LEFT-HAND SIDE.

10 USING MODERN TECHNOLOGY AND NEW INNOVATIONS, THE APPLE  
11 TECHNOLOGY SIMPLY ALLOWS YOU TO PUT THUMBNAILS OF THE PHOTOS IN  
12 A GRID FORMAT WHERE YOU CAN SIMPLY SCROLL THROUGH THEM. YOU  
13 DON'T NEED A LIST. YOU DON'T HAVE TO GO TO THE LIST TO FIND  
14 THE PHOTO. YOU DON'T NEED TO SEARCH IT. YOU JUST SCROLL  
15 THROUGH THE PHOTOS.

16 NOW, THE APPLE PHONES ACTUALLY DO HAVE A SEARCH FEATURE,  
17 AND I'VE PUT IT ON THE RIGHT. BUT THAT SEARCH FEATURE ONLY  
18 SEARCHES FOR WORDS. IT SEARCHES YOUR E-MAILS. IT SEARCHES  
19 YOUR CONTACTS. IT DOESN'T SEARCH PHOTOS OR VIDEOS.

20 WHY? BECAUSE THE NEWER AND MODERN TECHNOLOGY OF THE APPLE  
21 PRODUCTS, OF THE APPLE CAMERA ROLL, DOESN'T REQUIRE IT.

22 NOW, LET ME MAKE ONE MORE POINT ABOUT THE '449 PATENT THAT  
23 I'LL ASK YOU TO KEEP IN MIND.

24 YOU WILL LEARN THAT SAMSUNG ACTUALLY SELLS PRODUCTS TO  
25 APPLE FOR INCLUSION IN THE IPHONE AND THE IPAD, COMPONENTS.

1           YOU WILL LEARN THAT IT ACTUALLY SUPPLIES TWO OF THE  
2           COMPONENTS THAT IT'S NOW ACCUSING OF INFRINGING.

3           SO LET ME PAUSE ON THAT FOR A SECOND. SINCE 2010, SAMSUNG  
4           HAS BEEN SELLING AND MAKING BILLIONS OF DOLLARS SELLING  
5           COMPONENTS TO APPLE. SINCE 2010, IT'S BEEN SELLING THESE TWO  
6           COMPONENTS. NEVER ONCE, BEFORE IT WAS ASKED TO STOP COPYING,  
7           DID IT SAY, "WE'RE SELLING YOU THESE COMPONENTS, BUT YOU OUGHT  
8           TO KNOW THERE'S A PATENT OUT THERE THAT'S GOING TO BE A  
9           PROBLEM." NEVER ONCE.

10          BUT THEN AFTER APPLE SAID, "WOULD YOU PLEASE STOP  
11          COPYING," SAMSUNG SAID, "WE HAVE THIS PATENT. WE PURCHASED IT.  
12          THE COMPONENTS YOU'RE BUYING FROM US ARE NOW INFRINGING IT, AND  
13          WE'D LIKE YOU TO PAY US."

14          THAT IS A QUESTION WE WILL ASK YOU TO BRING YOUR COMMON  
15          SENSE TO BEAR ON WHEN YOU DECIDE THE CASE.

16          LET ME TURN QUICKLY TO THE OTHER PATENT, THE '239 PATENT.

17          THIS IS A PATENT WHERE SAMSUNG CLAIMS THAT THREE FEATURES  
18          IN APPLE'S IPHONE, MAIL, MESSAGES, FACETIME, INFRINGE. AS MANY  
19          OF YOU MAY HAVE SEEN ON TV, SOME OF YOU ON YOUR OWN PHONES,  
20          THAT ALLOWS YOU TO SEND E-MAIL, SEND TEXT MESSAGES, AND DO A  
21          TWO-WAY VIDEO CALL ON FACETIME.

22          AGAIN, YOU'RE GOING TO HEAR FROM THE FOLKS WHO DESIGNED  
23          THESE PRODUCTS AND MADE THESE INNOVATIONS. YOU'LL HEAR FROM  
24          TIM MILLET, WHO I'VE IDENTIFIED PREVIOUSLY, BUT YOU'LL ALSO  
25          HEAR FROM ROBERTO GARCIA, WHO'S IN THE MIDDLE. HE IS AN



1 ENGINEER WHO HELPED DEVELOP AND WILL DESCRIBE THE TIME AND  
2 EFFORT AND INNOVATION THAT WENT INTO FACETIME.

3 PROFESSOR STORER WILL AGAIN TELL YOU JUST HOW DIFFERENT  
4 THEY ARE.

5 LET ME EXPLAIN VERY QUICKLY HOW DIFFERENT THEY ARE.

6 THE '239 PATENT YOU WILL SEE DOES NOT DESCRIBE A  
7 SMARTPHONE, DOES NOT DESCRIBE A TABLET COMPUTER. AND CONTRARY  
8 TO WHAT SAMSUNG WILL TELL YOU, IT IS NOT THE INVENTION OF  
9 SENDING VIDEO OVER SLIDER.

10 INSTEAD IT DESCRIBES A VERY OLD DEVICE THAT HAD -- FOR  
11 CAPTURING A VIDEO THAT HAD ALREADY BEEN TAKEN SOMEWHERE ELSE.  
12 THIS IS AN INVENTION OF THE VCR BETAMAX DAYS IF ANY OF YOU ARE  
13 AS OLD AS I AM AND CAN REMEMBER, RIGHT?

14 SOMEBODY ELSE HAS TO CAPTURE THE VIDEO. YOU HAVE TO TAKE  
15 THE VIDEO, THEN YOU HAVE TO CAPTURE IT.

16 THAT'S WHY, WHEN YOU LOOK AT THE CLAIMS AGAIN, AND I'LL  
17 PUT THE CLAIM ON THE SCREEN, THIS CLAIM REQUIRES SOMETHING  
18 CALLED A VIDEO CAPTURE MODULE. THIS IS IN CLAIM 15, WHICH  
19 SAMSUNG CLAIMS WE INFRINGE.

20 BUT WHAT YOU WILL LEARN IS THIS PATENT CAME INTO BEING AT  
21 A TIME WHEN VIDEO WAS ANALOG, NOT DIGITAL, AND THE ONLY WAY TO  
22 GET IT INTO A DIGITAL COMPUTER WAS TO HAVE SOMEONE TAKE IT,  
23 RECORD IT, AND THEN CAPTURE IT ON THAT COMPUTER IN DIGITAL  
24 FORM.

25 YOU WON'T HAVE TO GUESS AT IT BECAUSE THAT'S EXACTLY WHAT

1 THE PATENT DESCRIBES, AND I'M GOING TO SHOW YOU FIGURE 1 FROM  
2 THE PATENT.

3 NOW, THE FOCUS OF CLAIM 15 IS THE GREEN REMOTE UNIT, AND  
4 I'M GOING TO FOCUS ON THAT. BUT WHAT THE PATENT WILL TELL YOU  
5 IS THE VIDEO IS TAKEN FIRST BY THE VIDEO CAMERA, AND THEN IT'S  
6 CAPTURED BY THE REMOTE UNIT, SOMETHING THAT YOU HAD TO DO 20  
7 YEARS AGO, SOMETHING THAT YOU DON'T HAVE TO DO TODAY.

8 YOU WILL LEARN THAT THE INVENTORS ACTUALLY BUILT A  
9 COMMERCIAL PRODUCT USING THE '239 PATENT.

10 NOW, AT THE TIME THIS WAS SOMETHING THAT WAS INTERESTING  
11 AND SIGNIFICANT. IT WAS USEFUL IN THE ERA OF BETAMAXES AND  
12 VCR'S, AND THEY GOT AWARDS FOR IT, AND THIS IS THE PRODUCT THAT  
13 THEY PUT ON THE MARKETPLACE.

14 IT IMPROVED THE LAPTOP THROUGH CELLULAR MODEMS AND THROUGH  
15 CELL PHONES. IT WEIGHED 28 POUNDS AND TOOK 16 MINUTES TO  
16 TRANSMIT A 15 SECOND VIDEO CLIP.

17 BUT YOU WILL LEARN THAT THE IPHONE AND THE IPAD DON'T NEED  
18 A VIDEO CAPTURE MODULE. THEY DON'T NEED IT BECAUSE THEY'RE NOT  
19 CAPTURING VIDEO TAKEN SOMEWHERE ELSE. IN FACT, THE IPHONE AND  
20 THE IPAD CAPTURE THE VIDEO, RECORD THE VIDEO THEMSELVES.  
21 THERE'S NO NEED TO RECORD IT SOMEWHERE ELSE AND THEN CAPTURE IT  
22 IN THE IPAD OR THE IPHONE.

23 FOR THAT REASON THE TECHNOLOGY IS FUNDAMENTALLY DIFFERENT.  
24 THEY'RE OF DIFFERENT TIMES. AND THE OLDER HARDWARE AND THE  
25 OLDER TECHNOLOGY OF THIS PATENT IS SIMPLY NOT USED.

1 SO LET ME RETURN -- WE'RE CLOSE TO THE END OF OUR  
2 OPENING -- TO THE CHRONOLOGY THAT MR. MCELHINNY STARTED WITH  
3 YOU ON. HE STARTED WITH YOU ON THE YEARS OF INVESTMENT AND THE  
4 RISK THAT APPLE TOOK.

5 HE TOLD YOU ABOUT -- AND IT'S HARD TO REMEMBER TODAY --  
6 ABOUT THE ENORMOUS RISK THAT APPLE TOOK AS A COMPANY, BUT ALSO  
7 AS PEOPLE, AND YOU WILL HEAR FROM SOME OF THESE PEOPLE, TO  
8 BRING TO THE WORLD DEVICES THAT WOULD FUNDAMENTALLY  
9 REVOLUTIONIZE COMMUNICATIONS.

10 THEY DID NOT KNOW WHETHER THEY WOULD BE A SUCCESS OR A  
11 FAILURE. THEY ONLY KNEW THAT THEY WERE TAKING A RISK.

12 BUT THAT RISK PAID OFF. IT'S PAID OFF WELL.

13 YOU NOW KNOW THAT AFTER STEVE JOBS INTRODUCED THE IPHONE,  
14 IT BECAME THE INVENTION OF THE YEAR.

15 AND WE KNOW THAT APPLE DID IT AGAIN WHEN APPLE INTRODUCED  
16 THE IPAD THREE YEARS LATER. IT, TOO, WAS AN ENORMOUS SUCCESS.

17 NOW, FOCUS ON THE TWO CLAIMS, THE TWO PATENTS THAT THEY'RE  
18 NOW ASSERTING AGAINST US. WHEN THIS STARTED, WHEN ALL THESE  
19 DOCUMENTS THAT MR. MCELHINNY WAS SHOWING TO YOU WERE BEING  
20 GENERATED, SAMSUNG SAID, OH, BY THE WAY, YOU'RE INFRINGING SOME  
21 PATENTS. HEY, YOU OUGHT TO STOP. THERE ARE SOME PATENTS OUT  
22 THERE THAT YOU'RE INFRINGING FOR THE IPHONE? NO. FOR THE  
23 IPAD? NO. FOR THE IPOD TOUCH? NO.

24 NOW, AT THAT MOMENT IN TIME, IN 2010, APPLE AND SAMSUNG  
25 HAD A MAJOR BUSINESS RELATIONSHIP. THEY STILL DO TODAY.

1 BUT APPLE'S INTELLECTUAL PROPERTY IS SO IMPORTANT THEY  
2 COULD NOT STAND BY AND JUST LET SOMEONE TAKE IT. IT COULD NOT  
3 STAND BY WITHOUT RAISING ITS HAND AND SAYING, "STOP. YOU NEED  
4 TO STOP."

5 EVEN FOR ITS BUSINESS PARTNER, IT SAID, "PLEASE STOP."

6 AT THAT POINT IN TIME SAMSUNG HAD TWO CHOICES.

7 IT COULD DO WHAT A GOOD BUSINESS PARTNER WOULD DO AND IT  
8 COULD HAVE STOPPED.

9 IT COULD HAVE INVESTED ITS OWN MONEY IN INVENTION AND  
10 INNOVATION AND IT COULD HAVE COME OUT WITH ITS OWN PRODUCTS,  
11 WITH ITS OWN INVENTIONS AND INNOVATIONS.

12 OR IT COULD HAVE REFUSED TO STOP COPYING. IT COULD HAVE  
13 CONTINUED TO BRING INFRINGING PHONES TO MARKET 37 MILLION  
14 TIMES, AND IT COULD HAVE GONE OUT AND BOUGHT TWO PATENTS AND  
15 SAID "YOU NOW INFRINGE. BUT WE'RE NOT GOING TO ASK FOR MUCH  
16 MONEY BECAUSE THE PATENTS AREN'T WORTH A WHOLE LOT."

17 NOW, WE ARE AT THE END OF OUR OPENING. I WANT TO END  
18 WHERE MR. MCELHINNY STARTED, BY THANKING YOU FOR YOUR TIME AND  
19 ATTENTION ON BEHALF OF MR. MCELHINNY, ME, OUR COLLEAGUES, BUT  
20 MOST OF ALL, BY APPLE AND THE EMPLOYEES AND THE INVENTORS AT  
21 APPLE.

22 OVER THE NEXT FEW WEEKS, WE'LL BE ASKING YOU TO LISTEN  
23 CAREFULLY TO A LOT OF EVIDENCE AND EVIDENCE THAT BEARS ON THE  
24 ISSUE THAT HER HONOR INSTRUCTED YOU ON TODAY.

25 AT TIMES, IT WILL SEEM LIKE YOU'RE DRINKING WATER FROM A

1 FIREHOSE.

2 BUT IF WE DO OUR JOB, WE WILL MAKE THAT TECHNOLOGY AND  
3 THAT EVIDENCE UNDERSTANDABLE TO YOU.

4 IF WE DO OUR JOB, YOU WILL KNOW WHO THE TRUE INVENTORS AND  
5 INNOVATORS ARE.

6 IF WE DO OUR JOB, YOU WILL KNOW WHO THE COPIER IS.

7 IF WE DO OUR JOB, YOU WILL KNOW WHO THE INFRINGER IS.

8 AND, LADIES AND GENTLEMEN, IF WE DO OUR JOB AND WE FOCUS  
9 YOU ON THE RISK THAT APPLE TOOK TO REVOLUTIONIZE THE WORLD, WE  
10 WILL BRING YOU THE EVIDENCE TO DETERMINE WHAT PATENTS AND  
11 INNOVATION ARE REALLY WORTH.

12 THANK YOU.

13 THE COURT: OKAY. TIME IS NOW 11:46. WE'LL STOP AT  
14 NOON. OKAY? THANK YOU.

15 MR. QUINN: OKAY. OPENING.

16 THE COURT: 11:47. GO AHEAD, PLEASE.

17 MR. QUINN: THANK YOU, YOUR HONOR.

18 **(MR. QUINN GAVE HIS OPENING STATEMENT ON BEHALF OF**  
19 **DEFENDANTS.)**

20 MR. QUINN: GOOD MORNING, FOLKS. IT'S STILL MORNING.

21 WOW. I CAN WONDER WHY SOME OF YOU MIGHT BE LOOKING A  
22 LITTLE SIDEWAYS AT ME RIGHT NOW AFTER HEARING THAT PRESENTATION  
23 OF APPLE'S CASE FROM TWO VERY SKILLED LAWYERS.

24 BUT DURING JURY SELECTION, YOU PROMISED US THAT YOU'D KEEP  
25 AN OPEN MIND UNTIL YOU HEARD ALL THE EVIDENCE, AND I'M SURE

1 THAT YOU APPRECIATE THAT YOU'VE ONLY HEARD A SMALL PART OF THE  
2 STORY AT THIS POINT.

3 SO I'D LIKE TO TALK TO YOU ABOUT SOME IMPORTANT FACTS THAT  
4 NEITHER MR. MCELHINNY NOR MR. LEE SPOKE ABOUT IN THEIR  
5 STATEMENTS TO YOU.

6 BEFORE I SIT DOWN, I'M GOING TO PROVE TO YOU, DURING THE  
7 COURSE OF THIS TRIAL, WE WILL PROVE TO YOU THAT, YES, APPLE IS  
8 A GREAT COMPANY, BUT THEY DON'T OWN EVERYTHING. THEY DON'T OWN  
9 THE ONLY WAY TO SEARCH ON PHONES. THEY DON'T OWN THE ONLY WAY  
10 TO SYNC. THEY DON'T OWN THE ONLY WAY TO HAVE AN UNLOCK SCREEN  
11 ON A PHONE.

12 WE WILL PROVE TO YOU THAT THEY VASTLY OVERSTATED THE  
13 SCOPES OF THOSE PATENT CLAIMS AND THAT THEY'RE COUNTING ON YOU  
14 TO BE CONFUSED AND NOT UNDERSTAND THAT, YES, INDEED, THESE ARE  
15 VERY, VERY NARROW SOFTWARE CLAIMS THAT COVER ONE ABILITY, ONE  
16 WAY TO DO SOMETHING THAT A LOT OF DIFFERENT COMPANIES DO  
17 DIFFERENT WAYS.

18 AND WE WILL PROVE TO YOU -- RIGHT NOW I'M JUST GOING TO BE  
19 BLUNT RIGHT NOW. THEIR REQUEST, THEY FINALLY SAID THE WORD,  
20 THEY FINALLY -- I WAS WAITING. I WAS WONDERING WHETHER THEY  
21 WOULD SAY IT TO YOU, THE "B" WORD, BILLIONS.

22 AND THEY PUT THAT NUMBER OUT THERE TO PUT IT IN YOUR HEADS  
23 SO THAT THAT'S THE DAMAGES HORIZON THAT YOU'RE THINKING OF.

24 FOLKS, I'LL PROVE TO YOU IN MY OPENING STATEMENT THAT THAT  
25 IS A GROSS, GROSS EXAGGERATION AND AN INSULT TO YOUR

1 INTELLIGENCE.

2 AS APPLE TOLD YOU, THE IPHONE WAS INNOVATIVE BACK IN 2007.  
3 IT WAS THE INVENTION OF THE YEAR ALL THOSE YEARS AGO BACK IN  
4 2007.

5 BUT THIS CASE IS REALLY NOT ABOUT THAT IPHONE OR ANY  
6 IPHONES THAT COME AFTER IT. APPLE ADMITS, THE JUDGE HAS  
7 INSTRUCTED YOU, I'M SURE IT WENT PAST YOU BECAUSE IT WAS SO  
8 QUICK, THE PRELIMINARY INSTRUCTIONS AND MR. MCELHINNY  
9 ACKNOWLEDGED IT, APPLE ADMITS THAT THREE OF THE FIVE PATENT  
10 CLAIMS THAT IT IS SUING ON WERE NOT IN THAT IPHONE AND HAVE  
11 NEVER BEEN IN ANY IPHONE SINCE. APPLE DOESN'T CONSIDER IT  
12 VALUABLE ENOUGH TO EVEN USE.

13 THERE'S A FOURTH ONE, SLIDE TO UNLOCK THAT IN THEIR LATEST  
14 PRODUCTS OPERATING SYSTEM, IOS 7, THEY'VE ABANDONED ALSO.  
15 WE'LL PROVE THAT TO YOU AS WELL.

16 THIS CASE REALLY IS NOT -- ALSO IT'S NOT ABOUT SAMSUNG  
17 COPYING APPLE.

18 THE FEATURES THAT APPLE ACCUSES IN THIS CASE ARE ALL  
19 SOFTWARE FEATURES, SOFTWARE THAT RUNS ON THE SMARTPHONES AND  
20 TABLETS OF MANY, MANY COMPANIES IN THE WORLD.

21 APPLE AGREES, APPLE AGREES THAT THAT SOFTWARE AND THOSE  
22 FEATURES WERE PUT ON THAT SOFTWARE -- OR THOSE FEATURES WERE  
23 PUT IN THAT SOFTWARE THAT'S USED BY MANY DIFFERENT COMPANIES BY  
24 ENGINEERS, SOFTWARE ENGINEERS AT ANOTHER COMPANY, NOT BY  
25 SAMSUNG. AND I'M NOT POINTING THE FINGER AS THEY'VE SAID.

1           WE'LL PROVE TO YOU THAT, IN FACT, THE ENGINEERS AT THAT  
2           OTHER COMPANY DID INDEPENDENTLY DEVELOP THOSE SOFTWARE  
3           FEATURES, AND THEY DID NOT COPY APPLE.

4           LET ME SHOW YOU WHAT I MEAN. THIS IS ONE OF THE PHONES  
5           THAT'S ACCUSED IN THIS CASE. IT'S A SAMSUNG PHONE. IT'S  
6           CALLED THE SAMSUNG GALAXY NEXUS. YOU CAN SEE THAT IT'S JOINT  
7           EXHIBIT 29K FOR THE RECORD. THIS CAME OUT IN DECEMBER 2011, A  
8           LITTLE BIT MORE THAN TWO YEARS AGO.

9           SAMSUNG ENGINEERED ALL THE HARDWARE ON THIS PHONE, EVERY  
10          BIT OF IT, AND IT OFFERS, THIS PHONE OFFERS CONSUMER,  
11          SMARTPHONE USERS, MANY THINGS THAT THE IPHONE DOESN'T JUST IN  
12          TERMS NOW OF THE HARDWARE.

13          IT HAS A -- YOU CAN'T SEE IT VERY WELL, BUT IT HAS KIND OF  
14          A CURVED SHAPE TO IT. IT FITS VERY WELL IN THE HAND.

15          IT HAS A 4.65 INCH SCREEN, WHICH IS LARGE -- A THIRD  
16          LARGER THAN, YOU KNOW, THE SAMSUNG -- THE IPHONE SCREEN WAS AT  
17          THE TIME THIS CAME OUT. IT'S LARGER THAN ANY SCREEN ON ANY  
18          IPHONE TO THIS DAY.

19          IT HAS A REALLY, A HIGH DEFINITION, VERY, VERY CLEAR  
20          SCREEN, A SUPER AMOLED SCREEN WHICH IS CLEAR. YOU CAN SEE  
21          THINGS BETTER IN BRIGHT LIGHT.

22          IT'S GOT A BATTERY IN IT THAT'S SWAPPABLE. YOU CAN BUY AN  
23          EXTRA BATTERY AND SWAP IT OUT WHENEVER YOU WANT. YOU DON'T  
24          HAVE TO TAKE YOUR PHONE BACK TO THE STORE TO REPLACE THE  
25          BATTERY.



1 IT HAS SOMETHING CALLED NEAR FIELD COMMUNICATIONS, REALLY  
2 COOL. WITH A COMPATIBLE PHONE, YOU CAN CLICK THEM TOGETHER AND  
3 TRANSFER FILES, INFORMATION, DATA, PHOTO FILES.

4 IT USES THE VERY HIGH SPEED FOR 4G LTE NETWORK, WHICH  
5 WASN'T INTRODUCED ON THE IPHONE UNTIL MUCH TIME LATER. THIS  
6 CAME OUT WITH A FASTER NETWORK SPEED.

7 THE TRUTH OF THE MATTER IS, PEOPLE AT SAMSUNG ARE VERY  
8 PROUD OF THE HARDWARE THAT THEY DEVELOPED. THEY BUILT THE BEST  
9 SMARTPHONES AND HARDWARE IN THE WORLD.

10 AND TECHNOLOGY REVIEWERS NOTICED WHAT SAMSUNG HAS ACHIEVED  
11 WITH ITS PHONES.

12 HERE'S ONE UP HERE FROM "LAPTOP MAGAZINE." YOU CAN SEE  
13 WHAT IT SAYS. THE BEST HD SCREEN ON THE MARKET.

14 "WIRED MAGAZINE," THE BEST ANDROID PHONE TO DATE. THE  
15 TRUEST REPRESENTATION OF ANDROID.

16 YOU'RE GOING TO LEARN IN THIS CASE THAT WHAT -- WHY DO  
17 PEOPLE BUY PHONES? THEY WANT YOU TO BELIEVE WHAT THEY ARE  
18 TRYING TO SELL YOU IN THIS CASE IS THAT PEOPLE BUY PHONES  
19 BECAUSE OF FIVE, YES, SMALL SOFTWARE FEATURES, PARTICULAR WAYS  
20 OF ACCOMPLISHING THINGS LIKE SYNCING AND SEARCHING.

21 THAT'S WHAT THEY WANT YOU TO BELIEVE.

22 AND THAT BECAUSE OF THOSE FIVE SOFTWARE FEATURES, PEOPLE  
23 BOUGHT A LOT MORE SAMSUNG PHONES, AND INSTEAD, IF SAMSUNG  
24 DIDN'T HAVE THEM, PEOPLE WOULD HAVE BOUGHT A LOT MORE IPHONES.

25 BUT YOU'LL LEARN THAT IT IS THESE FEATURES THAT I SHOWED

1 YOU ON THIS PHONE, HARDWARE FEATURES, AND OTHERS LIKE IT THAT  
 2 CAUSED CONSUMERS TO BUY THIS PRODUCT, THINGS LIKE A HIGH  
 3 QUALITY SCREEN, A HIGH QUALITY CAMERA, CONNECTIVITY, BATTERY  
 4 LIFE, WEIGHT, SHAPE, THINGS LIKE THAT.

5 THESE ARE THE REASONS, NOT THESE PARTICULAR VARIANTS IN  
 6 BACKGROUND OF SOFTWARE FEATURES THAT YOU CAN'T EVEN SEE, THE  
 7 THINGS THAT THEY ARE SUING SAMSUNG OVER.

8 NOW, ALL OF THIS HARDWARE IN THE NEXUS WAS CREATED BY  
 9 SAMSUNG. EVERY BIT OF IT.

10 AND THEY'RE SUING OVER THIS.

11 IT DOES NOT ACCUSE -- APPLE DOES NOT ACCUSE ANY OF THAT  
 12 HARDWARE OF INFRINGING ANY OF ITS RIGHTS, AND MR. MCELHINNY  
 13 SHOWED YOU A SCREEN OF A NUMBER OF SAMSUNG PRODUCTS. NONE OF  
 14 THOSE ARE ACCUSED. NONE OF THAT HARDWARE. NONE OF THE SHAPES  
 15 THAT YOU SEE THERE. NONE OF THOSE ARE ACCUSED IN THIS CASE OF  
 16 INFRINGING ANY OF THE RIGHTS.

17 YOU MIGHT BE SURPRISED TO LEARN ONE UNDISPUTED FACT. NOT  
 18 A SINGLE SOFTWARE FEATURE IN THIS NEXUS PHONE, WHICH I'M  
 19 HOLDING IN MY HAND, WAS CONCEIVED BY SAMSUNG, WAS DEVELOPED BY  
 20 SAMSUNG, OR WAS CODED BY SAMSUNG. NOT ONE OF THE ACCUSED  
 21 FEATURES ON THIS PHONE WHICH BRINGS US ALL HERE TODAY WAS  
 22 DESIGNED, MUCH LESS COPIED, BY ANYONE AT SAMSUNG.

23 THE ACCUSED FEATURES ON THIS PHONE WERE DEVELOPED  
 24 INDEPENDENTLY BY SOME OF THE MOST SOPHISTICATED AND CREATIVE  
 25 MINDS IN THE SMARTPHONE INDUSTRY, THE SOFTWARE ENGINEERS AT

1       GOOGLE UP THE ROAD IN MOUNTAIN VIEW, WHO CREATED THE ANDROID  
2       OPERATING SYSTEM USED BY ALL SMARTPHONE ENGINEERS, MEMBERS OF  
3       THE JURY, EXCEPT FOR APPLE, USED BY ALL HARDWARE COMPANIES, ALL  
4       HANDSET MANUFACTURERS, EXCEPT FOR APPLE. IN THE WAY THAT MOST  
5       P.C. MAKERS USE THE MICROSOFT WINDOWS OPERATING SYSTEM, ALMOST  
6       ALL, EVERYBODY BUT APPLE, IN THE SMARTPHONE INDUSTRY USES  
7       ANDROID SOFTWARE, NOT JUST SAMSUNG.

8               AND IN THIS TRIAL, YOU WILL HEAR FROM THOSE GOOGLE  
9       ENGINEERS. AND MR. MCELHINNY SAID WE'RE GOING TO POINT THE  
10      FINGER AT GOOGLE. WE'RE NOT GOING TO POINT THE FINGER AT  
11      GOOGLE. GOOGLE DIDN'T COPY. THOSE GOOGLE ENGINEERS, WHO YOU  
12      WILL HEAR FROM IN THIS TRIAL, WILL EXPLAIN TO YOU HOW THEY  
13      INDEPENDENTLY DEVELOPED THIS SOFTWARE WITHOUT COPYING.

14             THIS CASE IS REALLY NOT ABOUT THESE FIVE MINOR SOFTWARE  
15      FEATURES AND PATENT CLAIMS THAT APPLE IS ASSERTING. IT'S NOT  
16      ABOUT THEM CAUSING PEOPLE NOT TO BUY IPHONES AND INSTEAD TO BUY  
17      SAMSUNG PHONES.

18             IPHONE DOESN'T EVEN USE FOUR OUT OF THESE FIVE FEATURES.

19             SMARTPHONES INVOLVE HUNDREDS OF DIFFERENT FEATURES, SOME  
20      OF THEM BIG, SOME OF THEM SMALL.

21             YOUR COMMON SENSE -- AND SEVERAL EXPERTS WHO WILL COME IN  
22      AND TESTIFY AND WILL TELL YOU THAT CONSUMERS DON'T CHOOSE ONE  
23      PHONE OVER ANOTHER BECAUSE OF THE PARTICULAR WAY WORD  
24      CORRECTION SUGGESTIONS ARE PRESENTED ON THE SCREEN, WHICH IS  
25      WHAT THEIR PATENT COVERS. THERE'S A LOT OF DIFFERENT WAYS TO

1 DO THAT.

2 THEY DON'T BUY A PHONE BECAUSE OF THE PARTICULAR WAY THAT  
3 THE SOFTWARE SYNC'S IN BACKGROUND. THERE'S MORE THAN ONE WAY TO  
4 DO THAT.

5 OR THE PARTICULAR DESIGN OF THE UNLOCK SCREEN. THAT'S NOT  
6 WHY CONSUMERS BUY PRODUCTS.

7 APPLE'S CLAIMS ARE ALL THAT NARROW. APPLE DOES THIS, TOO,  
8 FOLKS. WE'LL SHOW YOU, WE WILL SHOW YOU APPLE'S REAL WORLD  
9 RESEARCH THAT THEY DO. THEY KNOW WHY PEOPLE BUY PHONES. THEY  
10 GO OUT AND THEY DO RESEARCH. THEY SURVEY THEM. AND THEIR OWN  
11 REAL WORLD RESEARCH THAT THEY DO FOR BUSINESS EVERY SINGLE, YOU  
12 KNOW, EVERY DAY, OR HOWEVER OFTEN THEY DO IT, NOT FOR COURT  
13 CASES, NOT FOR HIRED EXPERTS, NOT FOR LAWYERS, BUT WHAT THEY DO  
14 IN THEIR BUSINESS SHOWS THAT PEOPLE DON'T BUY -- THEY DON'T  
15 EVEN ASK SMARTPHONE PURCHASERS, IPHONE PURCHASERS, DID YOU BUY  
16 IT FOR THIS FEATURE OR DID YOU BUY IT FOR THAT FEATURE? THEY  
17 KNOW THEY DON'T. THEY KNOW THAT'S NOT WHAT MATTERS, AND WE'LL  
18 SHOW THAT TO YOU FROM APPLE'S OWN SURVEYS.

19 YET APPLE IS HERE LITERALLY SEEKING BILLIONS OF DOLLARS  
20 FOR PARTICULAR SOFTWARE CONFIGURATIONS THAT ARE UNDER THE HOOD  
21 IN THE PHONE THAT MOST CONSUMERS ARE NOT EVEN AWARE THAT IT'S  
22 THERE, AND THEY WANT TO TAKE THAT BIG NUMBER NOT ONLY TO THE  
23 BANK, NOT ONLY TO THE BANK, BUT TO GET AN ORDER SAYING THAT  
24 NONE OF THESE PHONES CAN BE SOLD IN THE UNITED STATES ANYMORE.  
25 IT'S AN ATTACK ON ANDROID. IT'S AN ATTACK, IT'S AN ATTACK --

1 MR. MCELHINNY: OBJECTION, YOUR HONOR. THIS IS  
2 ARGUMENT.

3 THE COURT: OVERRULED. OVERRULED.

4 MR. QUINN: IT'S THE TRUTH. IT'S AN ATTACK AN  
5 ANDROID, AND THAT'S WHAT THIS CASE IS.

6 EVEN THOUGH MOST OF THESE PATENT CLAIMS ARE NOT VALUABLE  
7 ENOUGH FOR APPLE TO USE ITSELF, IT CLAIMS THAT ANDROID USES  
8 THEM AND THAT THIS CAUSES CUSTOMERS TO BUY SAMSUNG PHONES. AND  
9 IF SAMSUNG DIDN'T HAVE THESE FEATURES, THEY'D SELL MORE APPLE  
10 PHONES EVEN THOUGH A CUSTOMER LOOKING FOR FOUR OF FIVE OF THESE  
11 FEATURES COULDN'T FIND THEM IN AN APPLE PHONE, THEY DON'T USE  
12 THEM.

13 AS TO THREE OF THEM, THAT'S UNDISPUTED.

14 SLIDE TO UNLOCK, WE'LL PROVE THAT TO YOU.

15 THE ONLY WAY THAT APPLE CAN MAKE THIS CLAIM FOR BILLIONS  
16 OF DOLLARS IS -- WHICH CONFLICTS WITH ALL THE REAL WORLD  
17 EVIDENCE YOU'RE GOING TO SEE -- IS TO COME UP WITH A STUDY  
18 WHICH THEY DID SPECIALLY FOR YOU BY THE MAN WHOSE NAME WAS  
19 INTRODUCED TO YOU, DR. JOHN HAUSER. AND I'M GOING TO SPEND  
20 SOME TIME TALKING WITH YOU THIS AFTERNOON ABOUT DR. HAUSER AND  
21 THE SURVEY, AND I WILL SHOW YOU THAT STUDY.

22 WHAT THIS CASE IS REALLY ABOUT IS APPLE TRYING TO LIMIT  
23 CONSUMER CHOICE AND TO GAIN AN UNFAIR ADVANTAGE OVER ITS ONE  
24 MAJOR COMPETITOR, GOOGLE'S ANDROID, A COMPETITOR THAT HAS  
25 PASSED APPLE IN SOME RESPECTS.

1 DON'T GET ME WRONG, APPLE IS AN AMAZINGLY INNOVATIVE  
2 COMPANY.

3 BUT IN SOME RESPECTS YOU'LL SEE GOOGLE'S ANDROID HAS  
4 PASSED APPLE.

5 AND IN THIS CASE, APPLE HAS SUED -- THIS IS WHAT'S GOING  
6 ON HERE -- THE BIGGEST USER OF GOOGLE'S ANDROID SOFTWARE AND  
7 THE MOST SUCCESSFUL MANUFACTURER OF ANDROID PHONES, SAMSUNG, TO  
8 TRY TO PREVENT IT FROM SELLING PHONES WITH THAT LEADING ANDROID  
9 SOFTWARE AND TO GET THE PROFITS THAT SAMSUNG HAS EARNED SELLING  
10 ANDROID PHONES.

11 IT IS TRYING TO GAIN FROM YOU IN THIS COURTROOM WHAT IT  
12 HAS LOST IN THE MARKETPLACE.

13 YOUR HONOR, WOULD THIS BE A GOOD PLACE TO BREAK?

14 THE COURT: IT'S 12:01. LET'S GO AHEAD AND BREAK FOR  
15 LUNCH. WE'LL SEE EVERYONE BACK AT 1:00 O'CLOCK.

16 PLEASE DON'T RESEARCH OR DISCUSS THE CASE.

17 THANK YOU FOR YOUR PATIENCE AND YOUR SERVICE.

18 (JURY OUT AT 12:02 P.M.)

19 THE COURT: THE JURORS HAVE LEFT THE COURTROOM.

20 THANK YOU.

21 (THE LUNCH RECESS WAS TAKEN FROM 12:02 P.M. TO 12:59 P.M.)  
22  
23  
24  
25

**AFTERNOON SESSION**

(JURY OUT AT 12:59 P.M.)

THE COURT: WELCOME. TAKE A SEAT, PLEASE. I UNDERSTAND THERE'S A SEALING ISSUE. IS THAT RIGHT? IS THERE AN ISSUE?

MR. MCELHINNY: THERE IS, YOUR HONOR.

THE COURT: OH, OKAY.

MR. SELWYN: GOOD AFTERNOON, YOUR HONOR. WITH THE FIRST WITNESS THIS AFTERNOON --

THE COURT: YES.

MR. SELWYN: -- MR. SCHILLER, SAMSUNG, WE UNDERSTAND, EXPECTS TO USE CERTAIN CONFIDENTIAL BUSINESS INFORMATION OF APPLE THAT DISCUSSES FUTURE BUSINESS STRATEGY, CAPACITY INFORMATION, FINANCIAL INFORMATION.

OUR SUGGESTION TO SAMSUNG WAS THAT WE HANDLE THOSE DOCUMENTS MUCH THE WAY WE'VE HANDLED SOURCE CODE IN THE PAST, WHICH IS SHOW IT TO THE JURY AND COUNSEL, NOT PUT IT UP ON THE SCREEN, AND HAVE COUNSEL REFER TO LINES OF THE DOCUMENT RATHER THAN READING ALOUD THE DOCUMENTS TO THE PUBLIC.

THAT WOULD BE ACCEPTABLE TO APPLE, THAT'S WHAT WE'VE DONE IN THE PAST, AND THEN APPLE WOULD MOVE TO SEAL THE DOCUMENT.

WE UNDERSTAND THAT THERE ARE PORTIONS OF CERTAIN DOCUMENTS THAT SAMSUNG WOULD LIKE TO READ ALOUD THAT RELATE TO CONFIDENTIAL BUSINESS INFORMATION OF APPLE'S CONCERNING FUTURE STRATEGY.

1 IF SAMSUNG INTENDS TO DO THAT, THAT'S AN ISSUE FOR US.  
2 THESE ARE DOCUMENTS THAT SAMSUNG HAS NEVER SEEN BEFORE.  
3 SAMSUNG IS NOT ENTITLED TO SEE, VERY SENSITIVE INFORMATION  
4 ABOUT APPLE'S ROADMAP AND FUTURE PRODUCT STRATEGY.

5 THE COURT: ALL RIGHT. SO YOUR REQUEST IS THAT WE,  
6 WHAT, SEAL THE COURTROOM? I WOULD LIKE TO USE THE PROCEDURE  
7 WE'VE USED IN THE PAST AND I DON'T SEE WHY A PARTICULAR PIECE  
8 OF INFORMATION HAS GOT TO BE STATED OUT LOUD. I DON'T WANT TO  
9 MOVE ALL THESE PEOPLE OUT TO THE HALLWAY.

10 MR. SELWYN: THAT IS OUR STRONG PREFERENCE AS WELL,  
11 TO DO IT AS WE'VE DONE IN THE PAST, REFERRING THE WITNESS TO  
12 PARTICULAR PORTIONS OF THE DOCUMENT, ASKING THE QUESTIONS ABOUT  
13 THOSE PORTIONS, BUT NOT READING IT ALOUD AND NOT PUTTING IT UP  
14 ON THE SCREEN.

15 MR. PRICE: THE REASON, YOUR HONOR, THE REASON THEY  
16 WANT TO DO THAT IS SO THAT WE CAN'T DO AN EFFECTIVE  
17 CROSS-EXAMINATION.

18 THESE DOCUMENTS DON'T HAVE ANYTHING TO DO --

19 THE COURT: JUST LET ME SEE THE DOCUMENTS.

20 MR. PRICE: SURE.

21 THE COURT: PLEASE.

22 MR. PRICE: I'LL GIVE YOU AN EXAMPLE. I'LL SHOW TO  
23 YOU EXHIBIT 411. IT'S AN EXAMPLE. THEY'RE NOT GOING TO SAY OR  
24 SHOW ANY OF THE NUMBERS IN THE DOCUMENT.

25 MR. SELWYN: YOUR HONOR, 411 IS AN IPHONE REVIEW FROM



1 THE SPRING OF LAST YEAR. IF YOU LOOK AT, BEGINNING AT PAGES  
2 '678 AND -9, THERE'S DISCUSSION ABOUT CARRIER SUBSIDIES,  
3 SPECIFIC CARRIER SUBSIDIES.

4 WE GET INTO FROM 13, 14, AND THEN MOST OF THE REMAINDER OF  
5 THE DOCUMENT, 21, 22, 18 AND 19, 26 THROUGH 32, 36 THROUGH 39  
6 AS FINANCIAL FORECASTS, DISCUSSIONS ABOUT SELLING --

7 THE COURT: OKAY. I'M SORRY TO INTERRUPT YOU. I  
8 HAVE A JURY WAITING.

9 SO JUST GIVE ME THE PAGE NUMBERS THAT ARE IN DISPUTE, AND  
10 I'M GOING TO GIVE YOU A RULING, NOT RIGHT NOW, AND WE'RE GOING  
11 TO GO AHEAD WITH THIS OPENING STATEMENT.

12 OKAY. SO WHAT ARE THE NUMBERS IN DISPUTE? I'LL TAKE A  
13 LOOK, AND I'LL LET YOU KNOW WHAT MY RULING IS BEFORE  
14 MR. SCHILLER TESTIFIES.

15 MR. SELWYN: THANK YOU.

16 THE COURT: WHAT ARE THE PAGE NUMBERS THAT ARE IN  
17 DISPUTE?

18 MR. PRICE: I CAN MAKE IT EASIER BY TELLING YOU THE  
19 PAGES I WOULD USE.

20 THE COURT: OKAY.

21 MR. PRICE: IT'S IN A DOCUMENT LIKE THIS, THE VERY  
22 SAME INFORMATION.

23 THE COURT: NO, NO. I WANT TO SEE THE DOCUMENT YOU  
24 WANT TO USE. I WANT TO SEE THE PAGES THAT ARE IN DISPUTE. I  
25 DON'T WANT IT'S LIKE THIS KIND OF REPRESENTATION.

1 MR. PRICE: 413, 413 THEN, YOUR HONOR.

2 THE COURT: 413. YOU MEAN DX 413?

3 MR. PRICE: YES, YOUR HONOR, DX 413.

4 THE COURT: AND ANY PARTICULAR PAGES, OR THE WHOLE  
5 THING.

6 MR. PRICE: YES. IN PARTICULAR, YOUR HONOR, PAGE 8.

7 THE COURT: OKAY. ALL RIGHT. WHAT ELSE?

8 MR. PRICE: PAGE 14.

9 THE COURT: ALL RIGHT. PAGE 8, I'M NOT GOING TO  
10 ALLOW YOU TO DO THIS OPEN. THESE ARE PROJECTIONS FOR FUTURE.

11 MR. PRICE: NO. THESE ARE CURRENT, YOUR HONOR.

12 THE COURT: WHEN IS YOUR FISCAL YEAR? WHEN DOES  
13 APPLE'S FISCAL YEAR BEGIN AND END?

14 MR. SELWYN: OCTOBER IS THE END OF THE FISCAL YEAR.

15 THE COURT: SO IT RUNS FROM NOVEMBER TO OCTOBER?

16 MR. SELWYN: CORRECT.

17 THE COURT: SO ARE YOU IN FISCAL YEAR 2014 OR 2013?  
18 OR WHAT'S YOUR CURRENT FISCAL YEAR RIGHT NOW?

19 MR. SELWYN: 2014.

20 THE COURT: OKAY. SO YOU WANT PAGE 8. WHAT ELSE?

21 MR. PRICE: PAGE 14.

22 THE COURT: OKAY.

23 MR. PRICE: AND PAGE 46.

24 THE COURT: OKAY. IS THAT IT? IS THERE ANY OTHER  
25 DISPUTE?

1 MR. PRICE: ONE MOMENT, YOUR HONOR.

2 MR. SELWYN: YOUR HONOR, THE PARTIES JUST -- WE MET  
3 AND CONFERRED FOR A LENGTHY AMOUNT OF TIME ABOUT AN ENTIRELY  
4 DIFFERENT DOCUMENT, WHICH IS THE ONE THAT WE HAD BEEN TOLD THAT  
5 THEY WERE GOING TO USE.

6 SO THESE THREE PAGES ARE NEW TO US AND HAVEN'T BEEN  
7 DISCUSSED SPECIFICALLY BEFORE.

8 MR. PRICE: THEY'RE IN THE OTHER DOCUMENT AS WELL.

9 THE COURT: OKAY. WHAT HAPPENED? I RULED ON THE  
10 OBJECTIONS THAT YOU ALL FILED YESTERDAY DURING LUNCH AND LAST  
11 NIGHT. SO WHY AM I GETTING HIT WITH THIS WHEN I HAVE A JURY  
12 WAITING FOR AN OPENING STATEMENT?

13 DID YOU CHANGE YOUR MIND --

14 MR. PRICE: NO.

15 THE COURT: -- AS TO WHAT EXHIBIT YOU WANTED TO USE?

16 MR. PRICE: OH, NO, YOUR HONOR. THESE WERE  
17 DISCUSSED.

18 MR. SELWYN: YOUR HONOR, WE'VE BEEN DISCUSSING THIS  
19 FOR THREE DAYS AND TRYING TO GET SPECIFICITY ABOUT WHAT WILL BE  
20 OFFERED.

21 THIS IS THE FIRST TIME WE'VE HEARD ABOUT THESE THREE PAGES  
22 IN PARTICULAR, AND WE'VE BEEN ASKING TO UNDERSTAND WHAT PAGES  
23 WOULD BE USED.

24 WE WERE DISCUSSING BEFORE EXHIBIT 411. WE MAY BE ABLE TO  
25 RESOLVE THESE THREE PARTICULAR PAGES. THIS IS THE FIRST TIME

1 WE'RE HEARING ABOUT THESE.

2 THE COURT: ALL RIGHT. WELL, WE'RE GOING FORWARD  
3 WITH AN OPENING STATEMENT. I'M NOT HAVING THIS JURY WAIT ANY  
4 LONGER.

5 SO WHY DON'T YOU MEET AND CONFER, AND LET ME KNOW IF YOU  
6 STILL HAVE A PROBLEM. OTHERWISE I'LL GIVE YOU MY RULING ON  
7 THESE THREE DOCUMENTS. OKAY.

8 MR. SELWYN: THANK YOU.

9 THE COURT: BUT I'M GOING TO KEEP THIS BINDER.

10 MR. PRICE: THANK YOU, YOUR HONOR.

11 THE COURT: AND IN THE FUTURE, I WANT YOUR SEALING  
12 OBJECTIONS IN THE OBJECTIONS THAT YOU'RE FILING, OKAY?

13 SO WHEN YOU IDENTIFY AN EXHIBIT THAT YOU INTEND TO USE,  
14 YOU NEED TO IDENTIFY THE PAGE NUMBERS, OKAY?

15 MR. PRICE: I HEAR YOU, YOUR HONOR.

16 THE COURT: ALL RIGHT. THANK YOU.

17 (JURY IN AT 1:06 P.M.)

18 THE COURT: ALL RIGHT. WELCOME BACK. PLEASE TAKE A  
19 SEAT.

20 MR. QUINN, IF YOU WOULD PLEASE CONTINUE.

21 MR. QUINN: THANK YOU, YOUR HONOR.

22 THE COURT: THE TIME IS NOW 1:07. GO AHEAD, PLEASE.

23 MR. QUINN: THANK YOU, YOUR HONOR.

24 BEFORE LUNCH I SHOWED YOU THIS NEXUS PHONE, WHICH IS ONE  
25 OF THE ACCUSED PHONES HERE. AS I TOLD YOU, ALL THE HARDWARE IN

1 HERE IS MADE BY SAMSUNG. NONE OF THE SOFTWARE. IT'S PURE  
2 ANDROID.

3 THERE ARE SOME PHONES, SOME SAMSUNG PHONES WHERE THE  
4 ANDROID SOFTWARE IS SLIGHTLY MODIFIED BY SAMSUNG WHEN WE GET IT  
5 AND PUT IT IN THE PHONE.

6 BUT JUST SO YOU KNOW, APPLE'S POSITION IS THAT THOSE  
7 MODIFICATIONS DON'T MAKE ANY DIFFERENCE, THAT THE MONEY IS OWED  
8 ANYWAY.

9 SO THIS IS REALLY ABOUT APPLE VERSUS GOOGLE'S ANDROID, AND  
10 I WANT TO TALK TO YOU A LITTLE BIT ABOUT THAT COMPETITION. AND  
11 I'M GOING TO -- AND WHAT THE EVIDENCE IS GOING TO SHOW ABOUT  
12 THAT COMPETITION AND ABOUT WHAT APPLE HAS CALLED IN ITS OWN  
13 INTERNAL E-MAILS THE INNOVATOR'S DILEMMA.

14 NOW, THE INNOVATOR'S DILEMMA IS ACTUALLY A PRETTY WELL  
15 UNDERSTOOD CONCEPT IN ACADEMIC RESEARCH AND TECHNOLOGY. THE  
16 INNOVATOR'S DILEMMA OCCURS WHEN, AND THESE ARE APPLE'S WORDS,  
17 THEY'RE STEVE JOBS' WORDS, WHEN A MARKET LEADER HANGS ON TO AN  
18 OLD PARADIGM FOR TOO LONG. AND WHEN THAT HAPPENS, WHEN A  
19 MARKET LEADER HANGS ON TO AN OLD PARADIGM FOR TOO LONG, IT  
20 BECOMES VULNERABLE TO INNOVATION BY OTHERS.

21 APPLE WAS AN INNOVATOR, BUT IN 2011, THERE WAS ANOTHER  
22 COMPANY THAT GOT INTO THE SMARTPHONE WORLD, WHICH WAS ALSO VERY  
23 INNOVATIVE, AND THAT'S GOOGLE.

24 WE ALL KNOW GOOGLE. I DON'T NEED TO SPEND MUCH TIME  
25 INTRODUCING GOOGLE TO YOU. IT STARTED AS A SEARCH COMPANY

1        HERE, TWO GUYS, STANFORD UNIVERSITY, IN A GARAGE. I THINK MANY  
2        OF YOU KNOW THE STORY.

3                IT STARTED OUT DOING SEARCH, BUT NOW SO MANY DIFFERENT  
4        APPLICATIONS, HUNDREDS OF PEOPLE USE IT EVERY DAY, MAPS, GPS,  
5        YOUTUBE, GOOGLE DOC, GOOGLE VOICE, GOOGLE NEWS. LOTS OF  
6        DIFFERENT THINGS WHICH PEOPLE FIND VERY, VERY USEFUL IN THEIR  
7        EVERY DAY LIVES.

8                THEY HAVE THE FINEST SOFTWARE ENGINEERS IN THE WORLD. IT  
9        SEEMS ON LINE THEY CAN DO JUST ABOUT ANYTHING. THEY DON'T NEED  
10       TO COPY PEOPLE. THEY DON'T NEED TO COPY APPLE.

11               LET ME TELL YOU ABOUT THE ANDROID STORY AND HOW THE  
12       DEVELOPMENT OF THE ANDROID OPERATING SYSTEM HAPPENED AT GOOGLE.

13               BACK IN 2005, TWO YEARS BEFORE THE IPHONE CAME OUT, EIGHT  
14       PEOPLE WHO HAD EXPERIENCE DEVELOPING SMARTPHONES GOT TOGETHER,  
15       THEY JOINED GOOGLE, AND SET OUT TO SOLVE A PROBLEM IN THE PHONE  
16       INDUSTRY.

17               THE PROBLEM WAS THAT HISTORICALLY THE PHONE INDUSTRY HAD  
18       BEEN VERY CLOSED. CARRIERS BASICALLY TOLD HANDSET  
19       MANUFACTURERS WHAT PHONES HAD TO DO, WHAT THEY HAD TO LOOK  
20       LIKE.

21               AND ALL THE DIFFERENT HANDSET MANUFACTURERS, THE PHONE  
22       MAKERS WERE MAKING THEIR OWN HARDWARE AND TRYING TO MAKE THEIR  
23       OWN SOFTWARE AT THE SAME TIME, AND IT TURNS OUT THAT THE  
24       HANDSET MANUFACTURERS WEREN'T THE BEST IN THE WORLD AT MAKING  
25       CUTTING EDGE SOFTWARE.

1           AND BY THE TIME THEIR SOFTWARE GOT TO MARKET, OFTEN THEY  
2           WERE BEHIND.

3           SO THESE EIGHT PEOPLE WHO JOINED GOOGLE HAD THE IDEA THAT  
4           WHAT THE INDUSTRY REALLY NEEDED WAS A SHARED, OPEN PLATFORM  
5           THAT EVERYONE COULD USE AND CUSTOMIZE AND USE TO INNOVATE AND  
6           IMPROVE.

7           AND THEY THOUGHT IT WOULD BE BEST IF THIS SOFTWARE, THIS  
8           PLATFORM, WAS NOT CONTROLLED BY JUST ONE COMPANY. INSTEAD,  
9           THEY WANTED TO GIVE MANUFACTURERS, PHONE MANUFACTURERS,  
10          APPLICATION DEVELOPERS, CARRIERS A PLATFORM WHICH THEY COULD  
11          ALL USE, ADJUST, INNOVATE WITH, ADAPT TO THEIR OWN USES, DEEPLY  
12          BRAND IT, AND TO GIVE THEM THE FREEDOM TO DO WITH THIS COMMON  
13          PLATFORM WHAT THEY WANTED TO DO, OR WHAT THEY COULD DO.

14          THE IDEA WAS TO CREATE THIS OPEN SOURCE PLATFORM, ANDROID,  
15          AND GIVE IT AWAY.

16          THEY SPENT THREE YEARS BUILDING IT AT GOOGLE AND GAVE IT  
17          AWAY. ANYBODY CAN DOWNLOAD IT IF YOU GO TO SOURCE.ANDROID.COM,  
18          AND PEOPLE IN THE INDUSTRY CAN DOWNLOAD THIS OPEN SOURCE  
19          PLATFORM.

20          FROM ABOUT 2005 TO 2008, THIS GROUP WORKED TOGETHER  
21          BUILDING ANDROID, WORKING LIKE KIND OF A STARTUP INSIDE A MUCH  
22          BIGGER COMPANY. THEY CONTACTED MANUFACTURERS, THEY CONTACTED  
23          CARRIERS TO SEE IF THEY WOULD BE INTERESTED IN THIS OPEN SOURCE  
24          PLATFORM, AND IT TURNED OUT THEY WERE.

25          AND SINCE THEN, YOU KNOW, IT CAME TO MARKET. IT'S BEEN

1 EXTREMELY SUCCESSFUL.

2 IN ADDITION TO BEING ON HUNDREDS OF MILLIONS OF PHONES AND  
3 TABLETS, ANDROID IS NOW IN THE DASHBOARD OF SOME CARS. IT'S --  
4 YOU KNOW, THE AMAZON KINDLE RUNS ON ANDROID. EVEN GOOGLE  
5 DOESN'T KNOW ALL THE DEVICES IN THE WORLD THAT RUN ON ANDROID.  
6 IT'S BEEN A HUGE SUCCESS.

7 AND THAT SUCCESS IS A TESTAMENT TO THE HARD WORK AND THE  
8 INGENUITY OF THE ENGINEERS AT GOOGLE AND THE ANDROID  
9 MANUFACTURERS. IT IS CLEAR THAT GOOGLE'S VISION WAS RIGHT.  
10 INNOVATION HAPPENS WHEN EVERYONE IS ABLE TO CONTRIBUTE THEIR  
11 OWN IDEAS.

12 AND GOOGLE IS A HIGHLY INNOVATIVE COMPANY. THEY'RE  
13 PERFECTLY CAPABLE OF DEVELOPING THEIR OWN SEARCH FEATURE ON A  
14 PHONE WITHOUT COPYING APPLE.

15 BUT THE END OF 2010, THE TOP OF GOOGLE'S MANAGEMENT,  
16 STEVE JOBS HIMSELF, RECOGNIZED THAT APPLE ITSELF FACED THE  
17 INNOVATOR'S DILEMMA AND THAT GOOGLE INNOVATION WAS DISRUPTING  
18 THE SMARTPHONE INDUSTRY THAT APPLE HAD DOMINATED SINCE 2007.

19 IN RESPONSE TO THIS, STEVE JOBS DECLARED, IN 2011, THAT  
20 APPLE WOULD START A HOLY WAR, A HOLY WAR ON GOOGLE.

21 APPLE KNEW THAT GOOGLE WAS FURTHER ALONG IN SOME IMPORTANT  
22 TECHNOLOGY SO --

23 MR. MCELHINNY: EXCUSE ME, YOUR HONOR. AGAIN, I HAVE  
24 TO OBJECT. THERE'S MOTIONS IN LIMINE ON THIS.

25 THE COURT: THERE WAS A MOTION IN LIMINE THAT THAT



1 WOULD NOT BE PERMITTED, SO THAT'S STRICKEN.

2 MR. QUINN: THAT WAS --

3 THE COURT: GO AHEAD, PLEASE.

4 MR. QUINN: THAT'S NOT MY UNDERSTANDING, YOUR HONOR.

5 THE OBJECTIONS TO THIS WERE OVERRULED. THIS DOCUMENT. IT'S  
6 EXHIBIT, DEFENSE EXHIBIT 489.

7 THE COURT: GO AHEAD, PLEASE, WITH THE REST OF YOUR  
8 OPENING.

9 MR. QUINN: SO MR. JOBS DRAFTED THIS AGENDA IN  
10 OCTOBER 2010 FOR APPLE'S ANNUAL RETREAT OF THE TOP 100  
11 EXECUTIVES AT APPLE WHERE THEY GET TOGETHER AND THEY TALK  
12 AMONGST THEMSELVES ABOUT WHAT IS MOST IMPORTANT TO THE COMPANY.  
13 WE HAVE STEVE JOBS'S AGENDA. THERE'S NOTHING MORE  
14 AUTHORITATIVE ABOUT WHAT MATTERS TO APPLE.

15 HERE IS THAT AGENDA. IT'S IN DEFENSE EXHIBIT 489, AND YOU  
16 CAN SEE UP AT THE TOP HERE -- I DON'T KNOW IF WE CAN ENLARGE  
17 THIS. STEVE JOBS, OCTOBER 2010, IT'S HIS CUT FOR THE AGENDA.

18 AND THEN IF WE GO FORWARD, GO DOWN BELOW, WHAT DOES HE  
19 WRITE? "2011 HOLY WAR WITH GOOGLE."

20 BELOW THAT. "APPLE IS IN DANGER OF HANGING ON TO THE OLD  
21 PARADIGM TOO LONG (INNOVATOR'S DILEMMA) GOOGLE AND MICROSOFT  
22 ARE FURTHER ALONG ON THE TECHNOLOGY.

23 "TIE ALL OUR PRODUCTS TOGETHER SO WE CAN FURTHER LOCK  
24 CUSTOMERS INTO OUR ECOSYSTEM."

25 AND THEN IF WE CAN GO FORWARD, COMPARISONS WITH GOOGLE,

1 SAMSUNG.

2 FORWARD. CATCH UP TO ANDROID WHERE WE ARE BEHIND,  
3 NOTIFICATIONS, TETHERING, SPEECH.

4 AND THEN NEXT, "STRATEGY: CATCH UP TO GOOGLE CLOUD  
5 SERVICES. ANDROID DEEPLY INTEGRATES GOOGLE CLOUD SERVICES.  
6 WAY AHEAD OF APPLE IN CLOUD SERVICES FOR CONTACTS, CALENDARS,  
7 AND MAIL."

8 DON'T HAVE TIME TO GO THROUGH THE COMPLETE DOCUMENT NOW,  
9 BUT THIS WILL COME INTO EVIDENCE. YOU WILL HAVE THIS DOCUMENT.

10 A HOLY WAR ON ANDROID. THAT WAS APPLE'S STRATEGY.

11 FROM APPLE'S POINT OF VIEW, GOOGLE'S ANDROID WAS TOO  
12 SUCCESSFUL. PEOPLE WERE BUYING TOO MANY ANDROID PHONES.

13 GOOGLE HAD ALWAYS BEEN A CLOUD COMPANY, AND ITS CLOUD  
14 TECHNOLOGY, WHICH AMONG OTHER THINGS, ENABLED PEOPLE TO  
15 WIRELESSLY SYNC, SYNC THEIR CALENDARS, CONTACTS, AND MAIL AND  
16 SAVE THEIR FILES ON A CLOUD SERVER WAS FAR AHEAD OF APPLE'S AND  
17 APPLE'S MISSION FOR 2011 WAS TO CATCH UP AND GET AHEAD OF  
18 GOOGLE AND ANDROID, AND THIS LAWSUIT IS PART OF THAT STRATEGY.

19 SAMSUNG -- LET ME TURN NOW TO TALK ABOUT SAMSUNG.

20 SAMSUNG, AS MR. MCELHINNY SAYS, HE'S RIGHT, HE'S BEEN A  
21 MOBILE PHONE INDUSTRY LEADER SINCE THE EARLY 1990S, LONG BEFORE  
22 APPLE LAUNCHED THE IPHONE JUST SEVEN YEARS AGO. THERE HAVE  
23 BEEN MANY FIRSTS THAT SAMSUNG HAS CONTRIBUTED TO THE CELL PHONE  
24 WORLD.

25 IF WE COULD LOOK AT SLIDE 14.

1           YOU CAN SEE SOME OF THEM UP THERE. FIRST 3G PHONES, FIRST  
2           3G WINDOWS SMARTPHONE, FIRST CAMERA PHONE, MORE 4G LTE PRODUCTS  
3           IN THE YEAR BEFORE APPLE DID, RECOGNITION SOFTWARE, HIGH DEF  
4           DISPLAYS.

5           SAMSUNG HAS CONTINUED THAT INNOVATION TO THIS DAY, OFFERED  
6           LARGER SCREENS, PHONES THAT WORK WITH STYLUSES, AND PHONES THAT  
7           CAN TRANSFER PHOTOS, VIDEOS AND OTHER DOCUMENTS JUST BY  
8           CLICKING THE PHONES TOGETHER.

9           THE PATENT OFFICE HAS RECOGNIZED SAMSUNG'S HARD WORK, AND  
10          I FIND IT VERY IRONIC THAT APPLE'S COUNSEL WOULD SAY THAT  
11          SAMSUNG DOESN'T CARE ABOUT PATENTS.

12          LAST YEAR THE UNITED STATES PATENT AND TRADEMARK OFFICE  
13          AWARDED SAMSUNG THE SECOND HIGHEST NUMBER OF PATENTS IN THE  
14          WORLD OF ANY COMPANY IN THE WORLD. NUMBER 1 WAS IBM. SAMSUNG  
15          CARES ABOUT PATENTS.

16          LET ME SHOW YOU ANOTHER PHONE, ANOTHER EXAMPLE OF ONE OF  
17          SAMSUNG'S MOST INNOVATIVE PHONES. IT'S ANOTHER PHONE THAT  
18          APPLE IS SUING OVER HERE.

19          THIS IS THE GALAXY NOTE II. THIS PHONE HAS -- IT WAS  
20          RELEASED IN OCTOBER 2012. IT'S ONE OF THE PHONES THAT APPLE  
21          SAYS WE WOULDN'T HAVE SOLD SO MANY OF THEM IF WE DIDN'T HAVE  
22          THESE PARTICULAR VERSIONS OF THESE SOFTWARE FEATURES.

23          THIS PHONE HAS JUST A TON OF UNIQUE FEATURES. SOME OF  
24          THEM UP ON THE SCREEN THERE, THE MULTI WINDOW BROWSING, THE  
25          VERY HIGH SPEED PROCESSOR, TWO GIGABYTES OF MEMORY.

1           MANY THINGS ON THIS PHONE THAT YOU CAN'T GET ON THE  
2           IPHONE. SOME PEOPLE WANT THESE FEATURES. IT'S NOT THESE KINDS  
3           OF SMALL FEATURES THAT APPLE IS SUING OVER THAT CAUSED THESE  
4           PEOPLE TO BUY THE PHONES.

5           SAMSUNG AND APPLE'S HARDWARE WENT IN VERY DIFFERENT  
6           DIRECTIONS IN 2013. YOU CAN SEE A BIG DIFFERENCE IN THEIR  
7           PRODUCTS UP THERE ON THE SCREENS, SOME COMPARISONS OF SOME OF  
8           THE MORE RECENT PRODUCTS.

9           WE WILL PROVE TO YOU IN THIS CASE THAT IT'S THESE  
10          FEATURES, THE KIND OF FEATURES I'M SHOWING YOU ON THE NEXUS, ON  
11          THE GALAXY NOTE, THINGS LIKE LARGE SCREENS, REPLACEABLE  
12          BATTERIES, VERY HIGH QUALITY CAMERA AND SPEED, USE OF STYLUSES,  
13          THEY ARE THE KINDS OF THINGS THAT DISTINGUISH SAMSUNG PRODUCTS  
14          AND CAUSE PEOPLE TO BUY THOSE PHONES.

15          THAT'S THE REASON WHY SAMSUNG IS THE LEADING MANUFACTURER  
16          OF ANDROID POWERED PHONES. IT'S WHAT SETS SAMSUNG APART FROM  
17          ALL THE OTHER PHONES THAT USE THIS SAME OPEN SOURCE ANDROID  
18          PLATFORM.

19          ANOTHER IMPORTANT REASON THAT SAMSUNG SELLS PHONES IS IT'S  
20          BEEN ABLE TO DO SOME VERY SUCCESSFUL ADVERTISING AND  
21          DEVELOPMENT OF ITS BRAND.

22          IN 2011 SAMSUNG HIRED A NEW U.S. MARKETING CHIEF, A MAN BY  
23          THE NAME OF TODD PENDLETON. AND THEY HIRED HIM FROM NIKE. AND  
24          HE APPROACHED ADVERTISING FOR SAMSUNG IN KIND OF A VERY  
25          DIFFERENT WAY. HE STARTED LOOKING AT SOCIAL MEDIA, TWITTER,

1 FACEBOOK, WEBSITES, AND TRACKING WHAT PEOPLE WERE SAYING ABOUT  
2 SAMSUNG'S PHONES.

3 AND THEN HE USED WHAT HE LEARNED FROM SOCIAL MEDIA TO  
4 CREATE ADS, AND THEY SOUNDED REAL TO PEOPLE BECAUSE THEY'RE NOT  
5 ADS THAT WERE WRITTEN BY AD EXECUTIVES, BUT ADS, THINGS THAT  
6 PEOPLE WERE, REAL PEOPLE WERE SAYING ABOUT THEMSELVES AND ABOUT  
7 REAL PHONES.

8 AND AROUND THE TIME THAT SAMSUNG WAS DOING THAT AND  
9 CHANGING ITS SHIFT AND ITS APPROACH TO ADVERTISING, THERE WAS  
10 AN ARTICLE THAT CAME OUT IN THE "WALL STREET JOURNAL,"  
11 OCTOBER 5, 2011, ABOUT THE LAUNCH OF THE IPHONE 4S.

12 AND BASICALLY THE GIST OF THE ARTICLE WAS THAT THE IPHONE  
13 4S WAS A REALLY GOOD PHONE, BUT IT WAS MORE, AS THE ARTICLE  
14 SAID, MORE FIZZLE THAN POP.

15 AND IN THE MIDDLE OF THIS ARTICLE WAS A BOX, AND THE BOX  
16 COMPARED THE IPHONE 4S, APPLE'S NEW PHONE, WITH THE SAMSUNG  
17 GALAXY S II. AND IN THIS BOX, IN THE "WALL STREET JOURNAL,"  
18 THE TWO OF THEM WERE COMPARED FEATURE BY FEATURE.

19 AND FROM THAT COMPARISON, THE UPSHOT WAS PRETTY CLEAR THAT  
20 ALTHOUGH THE IPHONE 4S WAS A VERY FINE PHONE, THE SAMSUNG PHONE  
21 WAS ACTUALLY BETTER.

22 AND TODD PENDLETON, THE NEW HEAD OF MARKETING FOR SAMSUNG,  
23 SEIZED ON THIS TO START A NEW ADVERTISING CAMPAIGN, THE NEXT  
24 BIG THING IS ALREADY HERE.

25 AND THIS ADVERTISING CAMPAIGN USED THE VOICE OF THE

1 CONSUMER, PRESENTED IN KIND OF AN AMUSING WAY, AND THIS THEME  
2 OF THE NEXT BIG THING IS ALREADY HERE TO CREATE A DISTINCTIVE  
3 BRAND PERSONALITY FOR SAMSUNG, AND IT CAUGHT ON, AND IT WAS  
4 POWERFUL. AND THAT'S ANOTHER REASON SAMSUNG HAS BEEN VERY  
5 SUCCESSFUL IN SELLING PHONES.

6 AND SAMSUNG'S BRAND BECAME AS STRONG AS APPLE'S. HERE'S  
7 AN INTERNAL DOCUMENT FROM APPLE SHOWING SOME RESEARCH RESULTS.  
8 YOU CAN SEE THIS IS AN APPLE DOCUMENT -- AS MR. MCELHINNY SAID,  
9 WE EXCHANGED DOCUMENTS IN DISCOVERY -- AND THIS IS WHAT  
10 APPLE -- IT SAYS "SAMSUNG'S BRAND IMPRESSION IS JUST AS STRONG  
11 AS APPLE'S IN THE U.S.," AND HERE YOU SEE APPLE HERE AND  
12 SAMSUNG HERE.

13 SO THIS NEW, EDGY MARKETING STRATEGY WAS CLEARLY PAYING  
14 OFF AND, FRANKLY, IT DROVE APPLE CRAZY.

15 WE WILL SHOW YOU INTERNAL APPLE DOCUMENTS, DOCUMENTS THAT  
16 HAVEN'T BEEN MADE PUBLIC BEFORE, DOCUMENTS THAT YOU WILL BE THE  
17 FIRST TO SEE THAT SHOW HOW APPLE WAS REALLY CONCERNED ABOUT THE  
18 COMPETITION IT WAS GETTING FROM ANDROID AND IN PARTICULAR FROM  
19 SAMSUNG.

20 THE "WALL STREET JOURNAL" PUBLISHED AN ARTICLE, THE TITLE  
21 OF WHICH WAS "HAS APPLE LOST ITS COOL TO SAMSUNG?"

22 AND APPLE'S HEAD OF WORLDWIDE MARKETING, PHIL SCHILLER,  
23 WHO APPLE SAYS WILL BE THE FIRST WITNESS WHO WILL TESTIFY TO,  
24 FORWARDED THIS TO HIS ADVERTISING AGENCY SAYING "WE HAVE A LOT  
25 OF WORK TO DO TO TURN THIS AROUND."

1 MR. SCHILLER BECAME MAYBE OBSESSED IS THE RIGHT WORD WITH  
2 SAMSUNG'S CAMPAIGN THAT PORTRAYED SAMSUNG AS THE YOUNGER,  
3 HIPPER CHOICE, AND HE WAS FRUSTRATED THAT APPLE SEEMED  
4 UNWILLING TO RESPOND.

5 APPLE HAS HAD ONE ADVERTISING COMPANY THAT THEY'VE USED  
6 EXCLUSIVELY FOR YEARS. THAT ADVERTISING COMPANY HAS ONLY ONE  
7 CLIENT. IT'S APPLE. THEY MEET EVERY SINGLE WEEK. THAT  
8 MR. SCHILLER WROTE AN E-MAIL TO TIM COOK SAYING I THINK WE'VE  
9 GOT TO START LOOKING FOR ANOTHER ADVERTISING AGENCY. WE'RE  
10 JUST NOT GETTING WHAT WE NEED.

11 IT BECAME A SUBJECT OF DISCUSSION AT THE BOARD OF DIRECTOR  
12 AT APPLE, WHAT ARE YOU GOING TO DO ABOUT THIS BRANDING PROBLEM?

13 SO THEY INTRODUCED THEIR FIRST BRAND CAMPAIGN SINCE 1997,  
14 IT WAS A BRAND CAMPAIGN. THE TITLE WAS SOMETHING LIKE DESIGNED  
15 IN CALIFORNIA. THE FIRST TIME APPLE HAD DONE A BRAND CAMPAIGN  
16 SINCE 1997 WHEN IT WAS ON THE VERGE OF BANKRUPTCY.

17 WHY ALL THIS? WHY WAS -- WHAT WAS THE SOURCE OF APPLE'S  
18 CONCERN? CLEARLY SAMSUNG WAS OFFERING CONSUMERS A CHOICE, A  
19 MORE -- A YOUNGER, MORE PLAYFUL TAKE ON SMARTPHONES AND  
20 CONSUMERS WERE LISTENING.

21 NOW, I WANT TO TALK TO YOU ABOUT THE INFRINGEMENT AND  
22 ISSUES -- INFRINGEMENT ISSUES AND VALIDITY ISSUES RELATED TO  
23 EACH OF THE APPLE PATENTS IN THIS CASE.

24 BUT BEFORE I DO THAT, I WANT TO DISCUSS THE DAMAGES, WHICH  
25 I'VE TOLD YOU, FRANKLY, ARE ABSURD, MULTI BILLION NUMBER OF

1 DAMAGES THAT THEY'RE SEEKING IN THIS CASE.

2 I WANT TO TALK ABOUT DAMAGES FIRST BECAUSE I THINK WHEN  
 3 YOU UNDERSTAND WHAT APPLE IS SEEKING AND HOW THEY WENT ABOUT  
 4 IT, IT'LL SHED SOME LIGHT ON THE CREDIBILITY OF APPLE'S WHOLE  
 5 CASE.

6 AS I'VE TOLD YOU, THESE PATENTS ARE VERY NARROW SOFTWARE  
 7 PATENTS THAT COVER -- THAT COVER ONE WAY TO HAVE A FEATURE THAT  
 8 CAN BE DONE MORE THAN ONE WAY, FEATURES -- THAT IS TO SAY, WHAT  
 9 A DEVICE CAN DO, SEARCH, SYNC IN BACKGROUND, THE OTHER THINGS.

10 IT'S NOT THE SAME THING AS A PATENTED CLAIM. A CLAIM MAY  
 11 BE ONE WAY TO ACCOMPLISH THAT FEATURE.

12 AND MANY COMPANIES, SAMSUNG, GOOGLE, OTHER COMPANIES HAVE  
 13 DIFFERENT WAYS OF ACCOMPLISHING THE SAME THING.

14 WE WILL SHOW YOU THAT APPLE HAS TAKEN WHAT REALLY ARE VERY  
 15 NARROW FEATURES AND OVERSTATED WHAT THEY DO AND WHAT THEY OWN  
 16 IN THEIR PATENTS TO CLAIM RIDICULOUS DAMAGES NUMBERS.

17 LET ME BEGIN AT THE END. I'M GOING TO SHOW YOU SOME  
 18 NUMBERS, AND YOU'LL SEE THE SOLE SUPPORT, THE ONLY WAY THEY  
 19 COME UP WITH THESE NUMBERS IS FROM A STUDY DONE BY DR. HAUSER.

20 AND I WANT TO TALK TO YOU ABOUT DR. HAUSER'S STUDY AT  
 21 LENGTH, BUT LET ME BEGIN AT THE END WITH SOME OF HIS  
 22 CONCLUSIONS.

23 AND I'VE PUT UP ON THE SCREEN WHAT HE'S CONCLUDED, OR SOME  
 24 OF HIS CONCLUSIONS.

25 AND HE CONCLUDED BASED ON HIS STUDY THAT PEOPLE WHO WOULD



1 PURCHASE A \$149 PHONE WOULD BE WILLING TO PAY AN ADDITIONAL  
2 10\$2 FOR APPLE'S FORM OF WORD SUGGESTION FOR A CORRECTION; THAT  
3 THEY WOULD PAY AN EXTRA \$44 FOR AN ABILITY TO SEARCH THE PHONE  
4 AND THE INTERNET AT THE SAME TIME IN THE WAY, PARTICULAR WAY  
5 THAT APPLE DOES.

6 TO GET JUST THESE FOUR FEATURES HE SAID THAT PEOPLE WOULD  
7 BE WILLING TO PAY ALMOST DOUBLE THE PRICE OF THE PHONE, \$271 ON  
8 TOP OF THE \$149 PHONE.

9 YOU CAN TELL THERE'S SOMETHING, SOMETHING FISHY HERE.

10 ANOTHER EXAMPLE OF THEIR OVERREACHING, ANOTHER FORM OF  
11 DAMAGES THEY SEEK AS WAS MENTIONED IS A ROYALTY ON THESE  
12 PATENTS, AND DR. -- APPLE'S OTHER EXPERT, DR. VELLTURO, TOOK  
13 DR. HAUSER'S SURVEY RESULTS AND, YOU KNOW, SORT OF SAID, OKAY,  
14 LET'S SUPPOSE THERE WAS A HYPOTHETICAL NEGOTIATION BETWEEN  
15 APPLE AND SAMSUNG, WHAT WOULD THEY HAVE AGREED TO AS A ROYALTY?

16 AND HE CONCLUDED THAT SAMSUNG WOULD HAVE AGREED TO PAY  
17 \$40.10 FOR THE SMARTPHONE PATENTS IN THIS CASE.

18 \$40.10 JUST FOR THESE FIVE SMART, SMALL SOFTWARE FEATURES.  
19 JUST BY WAY OF COMPARISON, A SMARTPHONE COSTS, YOU KNOW, AT THE  
20 HIGH END, SAY \$199 TO THE CUSTOMER. YOU HAVE THE SUBSIDIES  
21 FROM THE CARRIERS.

22 THE \$40 PER PHONE APPLE IS ASKING FOR THESE 5 SMALL  
23 SOFTWARE FEATURES IS 20 PERCENT OF THE PRICE.

24 NOW, THEIR EXPERT, DR. VELLTURO, ACKNOWLEDGES THAT SAMSUNG  
25 REALLY WOULDN'T AGREE TO DO THIS BECAUSE IT WOULD TAKE UP MOST

1 OF THE PROFIT MARGIN ON THE ACCUSED PHONES IN THIS CASE, BUT NO  
2 MATTER.

3 APPLE ALSO CLAIMS THAT THERE IS, ON SMARTPHONES, THEY  
4 CLAIM TO HAVE 3,500 PATENTS. IF EACH OF THOSE PATENTS WAS  
5 WORTH \$8 A PHONE, WHICH IS BASICALLY AN AVERAGE OF THE 5, YOU  
6 KNOW, DIVIDED INTO THE 40 THEY'RE SEEKING HERE, THAT MEANS THAT  
7 ONE SMARTPHONE, IF YOU WANTED TO MAKE A PHONE TO COMPETE WITH  
8 APPLE AND USE THEIR PATENTS, IT WOULD COST \$28,000. 140 TIMES  
9 MORE THAN THE ACTUAL COST OF THE PHONE.

10 SO, YOU KNOW, THESE ARE THE KIND OF RESULTS THAT  
11 DR. HAUSER'S STUDY LED TO.

12 AND LET'S SEE NOW HOW HE GETS TO THESE CRAZY NUMBERS, AND  
13 LET ME TALK ABOUT THAT STUDY.

14 REMEMBER, DR. HAUSER, THE WAY HE DOES HIS STUDY, HE'S  
15 SUPPOSED TO BE DECIDING HOW MUCH PEOPLE CARE ABOUT THESE  
16 FEATURES, WOULD THEY CHANGE THEIR PHONE PURCHASE DECISIONS IF  
17 THE FEATURES WERE THERE OR IF THEY WEREN'T THERE.

18 THE WHOLE POINT IS TO PROVIDE THE VALUE OF THE PATENT, THE  
19 DIFFERENCE BETWEEN WHAT YOU HAVE WITH THE PATENT CLAIM AND WHAT  
20 YOU WOULD HAVE WITHOUT THE PATENTED CLAIM.

21 IN OTHER WORDS, IF YOU HAD ANOTHER WAY TO DO IT THAT APPLE  
22 DIDN'T OWN, IT'S CALLED A NON-INFRINGEMENT ALTERNATIVE, WHAT'S  
23 THE DIFFERENCE BETWEEN THE TWO OF THEM.

24 IF YOU HAVE -- IF THERE ISN'T ANOTHER WAY TO DO IT, THEN  
25 THE PATENT MAY BE REALLY, REALLY VALUABLE.

1 BUT IF THERE'S ANOTHER WAY TO ACCOMPLISH THE SAME THING,  
2 IT'S VERY SIMILAR AND IT'S PERFECTLY ACCEPTABLE, THE PATENT  
3 REALLY MAY NOT HAVE MUCH VALUE AT ALL.

4 SO WHAT DR. HAUSER IS TRYING TO DO IS MEASURE WHAT'S THE  
5 VALUE OF WHAT APPLE CLAIMS VERSUS WHAT THE ALTERNATIVE WOULD  
6 BE, WHAT APPLE DOESN'T OWN.

7 AND, AGAIN, BEFORE I GO INTO THIS, LET ME EMPHASIZE HOW  
8 IMPORTANT DR. HAUSER'S STUDY IS TO APPLE'S CASE. IT IS THE  
9 ONLY EVIDENCE, THE ONLY EVIDENCE APPLE HAS TO SUPPORT ITS  
10 CLAIMS THAT CONSUMERS MAKE SMARTPHONE PURCHASE DECISIONS BASED  
11 ON THESE FIVE SMALL FEATURES.

12 HIS CONCLUSION IS, AS I'VE TOLD YOU, IF SAMSUNG DIDN'T  
13 HAVE THEM, WE'D SELL A LOT FEWER AND APPLE WOULD SELL AN AWFUL  
14 LOT MORE.

15 IF HE'S WRONG ABOUT THAT, THEN THEY DON'T HAVE ANY  
16 EVIDENCE ON THIS AND THERE AREN'T REALLY ANY DAMAGES.

17 IF IT IS THE CASE THAT -- IF IT'S TRUE THAT PEOPLE REALLY  
18 AREN'T MOTIVATED, THAT'S NOT WHY YOU BUY SAMSUNG PHONES, THEN  
19 APPLE DOESN'T HAVE ANY DAMAGES.

20 SO WHAT DID DR. HAUSER DO? HE FOUND PEOPLE WHO HAD  
21 PURCHASED SAMSUNG PHONES BEFORE AND ASKED THEM SOME QUESTIONS.

22 NOW, ONE OF THE THINGS HE DIDN'T ASK THEM IS WHY DID YOU  
23 BUY YOUR SAMSUNG PHONE? YOU WOULD THINK THAT MIGHT BE  
24 SOMETHING THAT YOU WOULD ASK.

25 INTERESTINGLY, HE SAID IN HIS REPORT THAT HE DIDN'T ASK OR

1 CARE WHETHER THE SAMSUNG CUSTOMERS WERE EVEN AWARE THAT THESE  
2 FIVE FEATURES WERE IN THEIR PHONES. HE WASN'T INTERESTED IN  
3 THAT.

4 HE HAS THE SUBJECTS COME IN, AND HE DOESN'T GIVE THEM  
5 PHONES. HE GIVES THEM DESCRIPTIONS. BASICALLY THEY LOOK AT  
6 MOCK -- THEY LOOK ON THE COMPUTER SCREEN. THEY SEE IMAGINARY  
7 PHONES WITH DESCRIPTIONS OF FEATURES AND THEY ARE ASKED TO MAKE  
8 A SERIES OF DECISIONS BASED ON THE DESCRIPTIONS OF THE FEATURES  
9 ABOUT WOULD YOU BUY THIS PHONE OR WOULD YOU BUY THAT PHONE?

10 IN ADDITION TO THE DESCRIPTION OF THE FEATURE, WHICH IS  
11 SUPPOSED TO MATCH APPLE'S PATENTED CLAIMS, WHAT IT OWNS, HE  
12 ALSO ASKS -- HE TELLS THEM, IF YOU DIDN'T HAVE THAT, YOU WOULD  
13 HAVE TO DO THIS. THIS IS YOUR ALTERNATIVE.

14 IN OTHER WORDS, HERE'S THE APPLE FEATURE. IF YOU DIDN'T  
15 HAVE THAT, YOU WOULD HAVE TO DO THIS.

16 NOW, YOU KNOW, IF THERE'S A BIG DIFFERENCE BETWEEN THE  
17 TWO, YOU'RE GOING TO GET A LOT OF PEOPLE SAYING THIS IS REALLY  
18 VALUABLE.

19 BUT THE PEOPLE AREN'T GETTING PHONES. THIS IS ALL JUST  
20 TEXT AND THEY GET TO WATCH A VIDEO AND THEN IN THESE  
21 DESCRIPTIONS GETTING THEM ACCURATE IS REALLY, REALLY IMPORTANT  
22 TO THE INTEGRITY OF THE SURVEY.

23 SO LET'S START WITH THE -- LET'S SEE WHAT HE DID. LET'S  
24 TAKE A LITTLE BIT OF TIME TO WALK THROUGH THIS. I'M GOING TO  
25 START WITH THE WORD CORRECTION OR WORD SUGGESTION PATENT, WHICH

1 AS MR. MCELHINNY TOLD YOU IS ONE THAT THE COURT HAS FOUND  
2 INFRINGEMENT ON THIS ONE. SO I THOUGHT I WOULD TALK ABOUT THAT  
3 ONE FIRST, IT'LL TAKE ME A LITTLE WHILE TO WALK THROUGH THIS,  
4 BUT I THINK YOU'LL SEE THAT THE DESCRIPTIONS THAT PEOPLE WERE  
5 GIVEN WERE, FRANKLY, DISHONEST. THAT'S THE PUNCH LINE HERE,  
6 AND I WANT TO PROVE THAT TO YOU NOW.

7 THIS PATENT RELATES TO THE KEY WORD SOFTWARE. ON ANDROID  
8 PHONES USERS CAN CHOOSE BETWEEN ANY NUMBER OF DIFFERENT  
9 KEYBOARDS. KEYBOARDS ARE CONTAINED IN THE SOFTWARE FROM  
10 DIFFERENT COMPANIES, FROM GOOGLE, FROM SAMSUNG, FROM A COMPANY  
11 CALLED NUANCE, WHICH IS ANOTHER COMPANY THAT, YOU KNOW,  
12 SUPPLIES THESE KEYBOARDS, AND THEY'RE IN SOME OF THE SAMSUNG  
13 PHONES. NUANCE IS A WELL-KNOWN COMPANY. APPLE ALSO BUYS  
14 INTELLECTUAL PROPERTY FROM NUANCE.

15 THE KEYBOARD SOFTWARE ARE CREATED BY SAMSUNG WHICH IS ON  
16 MANY OF ITS PHONES APPLE ADMITS DOES NOT INFRINGE. IT'S THE  
17 SWIPE KEYBOARD FROM NUANCE AND THE ANDROID, ONE OF THE ANDROID  
18 KEYBOARDS THAT HAVE BEEN FOUND TO INFRINGE.

19 BUT SAMSUNG HAS A KEYBOARD WHICH APPLE ADMITS DOES NOT  
20 INFRINGE. SO, IN OTHER WORDS, THAT'S AN ALTERNATIVE. THAT'S  
21 AN ALTERNATIVE TO APPLE'S PATENTED CLAIM. IT'S SOMETHING THAT  
22 APPLE DOESN'T OWN.

23 THIS -- APPLE'S CLAIM -- LET ME TAKE A LOOK AT IT. IT'S  
24 THE '172 PATENT. YOU'LL SEE IT'S A VERY, VERY NARROW CLAIM  
25 ABOUT A PARTICULAR WAY OF SUGGESTING WORD CORRECTIONS ON A

SMARTPHONE. THE TITLE OF THE PATENT IS NOT "HOW TO SUGGEST WORDS."

IT'S "HOW SUGGESTED WORDS ARE PROVIDED AS YOU TYPE," JUST LIKE THE TITLE SAYS. IT'S A METHOD FOR PROVIDING WORD RECOMMENDATIONS. OKAY? IT'S NOT ABOUT WHAT WORDS TO SUGGEST. IT'S ABOUT HOW SUGGESTED WORDS ARE PROVIDED AS YOU TYPE. THAT'S THE APPLE PATENT.

IN JUNE 2011, BEFORE APPLE'S PATENTED CLAIM ISSUED, SAMSUNG PUT ITS OWN NON-INFRINGEMENT KEYBOARD ON THE SAMSUNG DART PHONE, AND IT'S SINCE BEEN INSTALLED ON MANY SAMSUNG PHONES, SOMETIMES AS THE PRIMARY KEYBOARD, AND SOMETIMES AS AN ALTERNATIVE KEYBOARD WHICH THE USER CAN SELECT. THIS NON-INFRINGEMENT KEYBOARD WAS INCLUDED AS AN OPTION ON FIVE OF THE PHONES THAT APPLE ACCUSES IN THIS CASE.

LET'S TAKE A LOOK AT IT IN SLIDE 63. THIS IS THE SAMSUNG DART NON-INFRINGEMENT KEYBOARD.

IF YOU TYPE ON THIS KEYBOARD, IT AUTOMATICALLY CORRECTS TYPING ERRORS. IT ALWAYS SHOWS THE RECOMMENDED CORRECTIONS IN THIS TEXT AREA UP HERE AS YOU TYPE.

IF YOU TYPE, IT WILL JUST CORRECT. IT AUTOMATICALLY CORRECTS.

IF YOU WANT TO KEEP ONE OF THE SUGGESTED SPELLINGS, THEY APPEAR HERE IN THIS MESSAGE BAR DOWN HERE, YOU HAVE TO ACTUALLY TOUCH ON IT.

SO IF YOU, IF YOU -- IF YOU'RE SENDING AN E-MAIL TO A

1 MR. MESSAF AND WANT TO KEEP THAT, AND NOT MESSAGE, YOU CAN  
 2 TOUCH ON THIS AND YOU'LL GET MESSAF UP ABOVE. SO YOU CAN SEE  
 3 UP HERE, AUTO CORRECTION IS NOT SOMETHING YOU NEED APPLE'S  
 4 PATENTED CLAIM FOR. WATCH, I'M GOING TO SHOW YOU A VIDEO NOW,  
 5 AND WATCH WHAT HAPPENS WHEN THE WORD MESSAGE IS MISS TYPED.

6 IF WE COULD PLAY THAT.

7 (A VIDEOTAPE WAS PLAYED IN OPEN COURT OFF THE RECORD.)

8 MR. QUINN: IT WAS AUTOMATICALLY CORRECTED AFTER  
 9 EVERY SINGLE LETTER. YOU END UP AUTOMATICALLY WITH THE  
 10 CORRECTION UP ABOVE, MESSAGE.

11 NOW, LET'S COMPARE THAT TO THE INFRINGING SWIPE KEYBOARD.  
 12 THIS IS SLIDE 65. ON THE LEFT-HAND SIDE YOU HAVE THAT  
 13 NON-INFRINGING SAMSUNG DART KEYBOARD, WHICH WE JUST DISCUSSED.

14 ON THE RIGHT-HAND SIDE YOU HAVE THE NUANCE SWIPE KEYBOARD  
 15 WHICH HAS BEEN FOUND TO INFRINGE. IT PRACTICES APPLE'S PATENT.

16 YOU CAN SEE THEY BOTH LOOK SIMILAR. WE'RE NOT TALKING  
 17 ABOUT BIG DIFFERENCES.

18 THEY BOTH HAVE A TEXT AREA THAT YOU CAN SEE ABOVE AND A  
 19 SUGGESTIONS AREA, A SUGGESTIONS BAR BELOW.

20 IF WE COULD GO TO SLIDE 67.

21 YOU CAN SEE THEY BOTH HAVE THIS SUGGESTION BAR.

22 AND ON BOTH OF THEM, IT WILL TYPE, YOU KNOW, MESSAF, THE  
 23 MISSPELLING ON THE LEFT-HAND SIDE, AND THEN THERE WILL BE SOME  
 24 SUGGESTIONS AND IF YOU WANT TO TAKE ONE OF THOSE SUGGESTIONS,  
 25 YOU CAN JUST TAP ON IT. BOTH OF THEM WORK IDENTICALLY, THE

1 NON-INFRINGEMENT SAMSUNG DART KEYBOARD AND THE KEYBOARD THAT  
2 PRACTICES -- THAT INFRINGES APPLE'S PATENT.

3 HERE IS THE INFRINGING SWIPE KEYBOARD, THE ONE THAT WAS ON  
4 THE RIGHT, IN ACTION. I WANT TO SHOW THAT TO YOU. YOU SEE  
5 THAT AUTOMATICALLY CORRECTS. BUT THE WAY IT WORKS IS DIFFERENT  
6 ON APPLE'S KEYBOARD. INSTEAD OF CONTINUOUSLY CORRECTING AS  
7 YOU'RE TYPING, IT'S NOT UNTIL YOU FINISH AND HIT WHAT'S CALLED  
8 A DELIMITER, EITHER A PERIOD OR A COLON OR A SPACE BAR, THAT IT  
9 POPS UP WHAT THE SUGGESTED WORD IS. YOU WOULDN'T KNOW WHAT'S  
10 GOING TO POP UP UNLESS YOU LOOK DOWN. THE SUGGESTED WORD IS  
11 DOWN BLOW IN THAT SPACE BAR. YOU WON'T KNOW WHAT'S GOING TO  
12 COME UP WITHOUT ACTUALLY LOOKING DOWN.

13 AND SOME PEOPLE MIGHT SAY THAT THAT, YOU KNOW, APPLE, THAT  
14 PATENT, THAT WAY THAT MAKES YOU HAVE TO LOOK DOWN TO SEE IF  
15 WHAT YOU REALLY INTENDED TO TYPE IS DOWN THERE IS NOT AS GOOD,  
16 IT'S INCONVENIENT, YOU HAVE TO LOOK DOWN.

17 THE WAY YOU KNOW THAT APPLE THINKS THAT'S A NUISANCE,  
18 BECAUSE IN THE IPHONE, THEY DON'T USE THAT PATENT, NEVER HAVE.  
19 HAVE NEVER USED IT. THE IPHONE DOES IT DIFFERENTLY.

20 LET'S TAKE A LOOK AT SLIDE 72.

21 THE IPHONE, THE WORD SUGGESTION IS FLOATED IN A BOAT UP IN  
22 THE TEXT AREA SO THAT YOU KNOW BY LOOKING UP THERE, YOU DON'T  
23 HAVE TO LOOK DOWN, YOU KNOW WHAT'S GOING TO HAPPEN IF YOU HIT  
24 THE SPACE BAR OR THE DELIMITER.

25 SO WHAT ARE THE DAMAGES THAT APPLE SEEKS FOR USE OF ITS



1 OWN PARTICULAR FORM OF WORD CORRECTION, WHICH IT DOESN'T EVEN  
2 USE, AND WHICH SOME PEOPLE MIGHT CONSIDER INFERIOR?

3 ACCORDING TO DR. HAUSER'S SURVEY, WHAT SHOULD SAMSUNG PAY?  
4 \$206.4 MILLION OF THE 2 BILLION-PLUS DOLLARS.

5 OF THE -- DR. HAUSER'S STUDY SAID, THAT CHART WE LOOKED AT  
6 BEFORE, SUPPOSEDLY HIS CONCLUSION IS PEOPLE WOULD PAY \$102 MORE  
7 PER PHONE TO HAVE THIS FEATURE WHERE YOU HAVE TO LOOK DOWN AND  
8 MAKE YOUR CHOICE, WHICH APPLE DOESN'T EVEN USE.

9 HOW DID HE ARRIVE AT THAT NUMBER? WELL, DR. HAUSER'S  
10 SURVEY WAS SERIOUSLY FLAWED. REMEMBER, I TOLD YOU, IT'S ALL  
11 ABOUT THE DESCRIPTIONS THEY'RE GIVING. THEY DON'T GET ANY  
12 PHONES. THEY'RE JUST GETTING DESCRIPTIONS.

13 AND LET ME TELL YOU WHAT THEY WERE TOLD ABOUT THESE WORD  
14 SUGGESTION FEATURES, AND THIS IS WHAT THEY WERE TOLD ABOUT  
15 APPLE'S PATENTED METHOD. YOU'LL SEE IT UP HERE. THIS IS WHAT  
16 THE SURVEY PARTICIPANTS WERE PRESENTED WITH. IT SAYS AT THE  
17 TOP AUTOMATIC WORD CORRECTION.

18 NOW, YOU KNOW THAT'S NOT THE TITLE OF THEIR PATENT. WE  
19 JUST LOOKED AT THAT. IF WE GO BACK TO SLIDE 60, THEIR PATENT  
20 IS "A METHOD, SYSTEM, AND GRAPHICAL USER INTERFACE FOR  
21 PROVIDING WORD RECOMMENDATIONS."

22 BUT PARTICIPANTS AREN'T TOLD THAT WHAT THEY'RE BEING  
23 PRESENTED HERE, THE DESCRIPTION IS JUST OF A METHOD. THEY'RE  
24 TOLD THAT THE FEATURE IS AUTOMATIC WORD CORRECTION, PERIOD, IN  
25 BIG BOLD LETTERS ON A PICTURE, AN ICON UP HERE, TWO PIECES OF

1 PAPER.

2 THE ONE IN THE BACK SAYS X, MISTAKE, BEING REPLACED WITH  
3 ANOTHER PIECE OF PAPER, CHECK, CORRECT.

4 NO METHOD. ONLY AUTOMATIC WORD CORRECTION. ONLY WRONG  
5 SPELLING MADE RIGHT.

6 THAT ICON IS THE SYMBOL FOR THIS PATENT CLAIM IN  
7 DR. HAUSER'S TEST. THAT ICON TELLS SURVEY PARTICIPANTS THAT  
8 THEIR ONLY CHOICE -- YOU KNOW, THE CHOICE THAT YOU'RE MAKING,  
9 YOU'RE TRYING TO VALUE WHAT THE DIFFERENCE IS BETWEEN SAMSUNG,  
10 THE APPLE PATENT AND WHAT WOULD OTHERWISE HAVE TO DO, THEY'RE  
11 TOLD THE ONLY CHOICE IS BETWEEN WORD CORRECTION AND NO WORD  
12 CORRECTION.

13 NOW, CLEARLY THE DIFFERENCE BETWEEN HAVING AUTOMATIC WORD  
14 CORRECTION IS VERY DIFFERENT FROM THE VALUE OF HAVING IT BY ONE  
15 METHOD RATHER THAN ANOTHER. THE DIFFERENCE BETWEEN YOU EITHER  
16 HAVE IT OR YOU DON'T OR YOU HAVE IT BY ONE METHOD OR YOU HAVE  
17 IT BY ANOTHER, THERE'S A BIG DIFFERENCE.

18 THERE IS NO SUBTLETY IN DR. HAUSER'S DESCRIPTION.

19 OF COURSE APPLE HAS NO RIGHT TO A MONOPOLY UNDER ITS  
20 PATENT CLAIM TO AUTOMATIC WORD CORRECTION BECAUSE, AS YOU HAVE  
21 SEEN FROM SAMSUNG'S NON-INFRINGEMENT DART KEYBOARD, YOU ALREADY  
22 KNOW THERE'S AT LEAST ONE NON-INFRINGEMENT ALTERNATIVE THAT DOES  
23 PROVIDE AUTOMATIC WORD CORRECTION, AND SOME WOULD SAY IT'S  
24 BETTER. YOU DON'T HAVE TO LOOK DOWN. THE CORRECTION, IT  
25 HAPPENS WHILE YOU ARE TYPING IN THE TEXT AREA.

1 SAMSUNG HAD THAT ON ITS PHONES BEFORE APPLE'S PATENT  
2 ISSUED.

3 SAMSUNG DOES NOT -- WELL, APPLE DOES NOT OWN AUTOMATIC  
4 WORD CORRECTION. APPLE DOESN'T INVENT IT. IT HAS NO RIGHT TO  
5 BE PAID FOR IT.

6 THE ASSERTION THAT APPLE OWNS AUTOMATIC WORD CORRECTION IS  
7 UNTRUE, AND THAT UNTRUTH INFECTED DR. HAUSER'S SURVEY.

8 AND, AGAIN, THAT SURVEY IS THE ONLY BASIS IN THIS LAWSUIT  
9 THAT'S GOING TO BE PRESENTED TO YOU FOR THOSE VERY, VERY LARGE  
10 NUMBERS.

11 THIS STUDY IS THE ONLY EVIDENCE OF CONSUMERS' PREFERENCES  
12 AND FEATURE VALUE IN THIS LAWSUIT FOR CELL PHONES, FOR TABLETS,  
13 FOR EVERY SINGLE CLAIM, ALL FIVE OF THEM, IT ALL COMES BACK TO  
14 DR. HAUSER.

15 THIS WASN'T JUST AN INSTANCE OF A CAREFULLY -- CARELESSLY  
16 CHOSEN ICON. IT WAS DELIBERATELY AND CAREFULLY DESIGNED TO  
17 MISLEAD YOU.

18 HERE'S THE PART OF THE EXPLANATION THAT WAS GIVEN TO TEST  
19 SUBJECTS THAT WAS MEANT TO DESCRIBE WHAT THE ALTERNATIVE WOULD  
20 BE, IF YOU DON'T USE APPLE'S PATENTED CLAIM, WHAT'S THE  
21 ALTERNATIVE?

22 AND WHAT PEOPLE ARE TOLD, YOU CAN SEE IT HERE, "WITHOUT  
23 THIS FEATURE, PRESSING SPACE OR A PERIOD WOULD RETAIN YOUR  
24 ORIGINAL TEXT," AND WHAT HE'S TOLD THEM HERE IS IF YOU'RE  
25 TRYING TO TYPE BIRTHDAY AND INSTEAD YOU TYPE BIRFDAY WITH AN F,

1 IT TELLS THEM "WITHOUT THIS FEATURE, PRESSING SPACE OR A PERIOD  
2 WOULD RETAIN YOUR ORIGINAL TEXT, BIRFDAY. IF YOU WANT TO  
3 REPLACE YOUR ORIGINAL TEXT, YOU NEED TO SELECT THE SUGGESTED  
4 BIRTHDAY YOURSELF. YOU WOULD HAVE TO GO DOWN AND SELECT IT."

5 THAT'S SIMPLY WRONG. APPLE MADE THAT UP. YOU KNOW THAT'S  
6 WRONG. YOU'VE SEEN THE DART KEYBOARD. IT AUTOMATICALLY  
7 CORRECTS IN THE SCREEN.

8 IT'S -- THAT'S HOW APPLE COMES UP WITH THESE NUMBERS THAT  
9 THIS IS WORTH \$206 MILLION.

10 APPLE MAKES A VERY, VERY SERIOUS DAMAGES CLAIM, BUT THEY  
11 DIDN'T GO ABOUT STUDYING DAMAGES IN ALL SERIOUSNESS. IN FACT,  
12 DR. HAUSER'S STUDY, YOU WILL SEE, IS COMPLETELY REMOVED FROM  
13 REALITY.

14 LET ME GIVE YOU ANOTHER EXAMPLE OF AN UNTRUTHFUL  
15 DESCRIPTION OF ANOTHER ONE OF THESE PATENTED FEATURES THAT THEY  
16 GAVE TO SURVEY PARTICIPANTS, WHICH IS THE WHOLE BASIS FOR THEIR  
17 CLAIM THAT FOLKS PREFERRED -- YOU KNOW, WOULD BUY FEWER SAMSUNG  
18 PHONES AND WOULD BUY MORE APPLE PHONES.

19 AND THIS IS THE BACKGROUND SYNCING CLAIM. THIS IS THE  
20 DESCRIPTION THAT PEOPLE WERE GIVEN. AND AT THE TOP IT  
21 DESCRIBES THE APPLE PATENT, AND THEN IT DESCRIBES WHAT THE  
22 ALTERNATIVE, WHERE IF YOU DON'T PRACTICE THE APPLE PATENT, THIS  
23 IS WHAT WOULD HAPPEN TO YOU.

24 "WITHOUT THIS FEATURE, YOU WOULD HAVE TO WAIT TO USE THE  
25 APP, FOR EXAMPLE, THE CONTACTS APP, WHILE THE DATA FOR THE APP

1 IS SYNCHRONIZING WITH A REMOTE COMPUTER, AND THAT WAIT MAY BE  
2 LONG OR SHORT."

3 SO IN OTHER WORDS, THE SURVEY PARTICIPANTS ARE TOLD, "YOU  
4 EITHER USE APPLE'S PATENT" WHICH, AGAIN, THIS IS ANOTHER ONE,  
5 APPLE DOESN'T USE THIS, IT'S NOT IN ANY IPHONE, NEVER HAS BEEN,  
6 THEY'RE TOLD, "YOU EITHER USE APPLE'S PATENT, OR YOUR PHONE  
7 WILL FREEZE FOR A PERIOD OF TIME, AND THAT MAY BE A LITTLE  
8 PERIOD OF TIME, OR IT MAY BE A LONG PERIOD OF TIME."

9 AND THAT IS ALSO, FRANKLY, NOT TRUE. APPLE DID NOT CREATE  
10 THE ONLY WAY TO SYNC DATA WITHOUT THE DEVICE FREEZING. THIS IS  
11 ANOTHER EXAMPLE OF APPLE EXAGGERATING THE SCOPE OF ITS PATENTED  
12 CLAIMS.

13 THAT SYNCING, THAT ABILITY, HAD BEEN DEVELOPED USING  
14 DIFFERENT PROCESSES BY OTHER INVENTORS AT LEAST SEVEN YEARS  
15 BEFORE APPLE'S PATENT ISSUED. I'LL SHOW YOU THOSE OTHER  
16 PROCESSES IN A LITTLE BIT.

17 SO WHEN MR. HAUSER ASKED THEM, YOU KNOW, THE PUNCH LINE IS  
18 AFTER THEY'RE GIVEN THESE CHOICES, HE ASKED THEM, HOW IMPORTANT  
19 IS THAT FEATURE THAT KEEPS YOUR PHONE FROM FREEZING UP? OF  
20 COURSE WHAT DID THEY SAY, THEY SAID THAT WAS IMPORTANT. THAT  
21 WAS BASED ON A MISREPRESENTATION BECAUSE PHONES CAN USE THOSE  
22 OTHER PROCESSES THAT APPLE DOESN'T OWN. APPLE DOESN'T OWN  
23 EVERYTHING WHEN IT COMES TO SYNCING OR WORD CORRECTION OR ANY  
24 OF THESE OTHER FEATURES.

25 THE DESCRIPTION ON SYNCING IS WRONG IN ANOTHER RESPECT.

1 ALL THE PARTIES AGREE THAT APPLE'S PATENT REQUIRES THAT YOU  
2 HAVE THREE SYNCING COMPONENTS IN THE BACKGROUND. AND IT'S NOT  
3 SO -- IN OTHER WORDS, IT'S NOT JUST ABOUT FREEZING AND SYNCING  
4 GENERALLY. THIS PATENT IS A VERY SPECIFIC ONE. IT REQUIRES  
5 THREE SYNCING COMPONENTS.

6 DR. HAUSER'S DESCRIPTION TO THE SURVEY PARTICIPANTS DIDN'T  
7 MENTION THIS AT ALL, AND, IN FACT, THE ANDROID SOFTWARE PROCESS  
8 SAMSUNG USES AND APPLE ACCUSES HERE CONTAINS ONLY TWO  
9 COMPONENTS THAT ACTUALLY ARE DOING THE SYNCING.

10 WITHOUT A TRUTHFUL DESCRIPTION OF APPLE'S CLAIMS AND WHAT  
11 THE ALTERNATIVES WOULD BE, THE SURVEY, DR. HAUSER'S SURVEY IS  
12 WORTHLESS.

13 AS I TOLD YOU, CLEARLY THESE DESCRIPTIONS ARE REALLY  
14 IMPORTANT SINCE THAT'S WHAT THE SURVEY PARTICIPANTS ARE BASING  
15 ALL THEIR JUDGMENTS ON ABOUT THEIR PREFERENCES AND WHAT'S THIS  
16 WORTH.

17 SO YOU MIGHT ASK, WHO WROTE THESE DESCRIPTIONS THAT WERE  
18 SO IMPORTANT AND CENTRAL TO THIS SURVEY? IT WASN'T DR. HAUSER.  
19 IT WAS APPLE'S LAWYERS.

20 AND GUESS WHAT? THEY WEREN'T EXACTLY EVEN-HANDED.

21 LET'S LOOK AT WHAT DR. HAUSER SAID IN HIS REPORT. IN THE  
22 FIRST SENTENCE THERE HE ACKNOWLEDGES THAT TO GET RELIABLE  
23 RESULTS FROM THE SURVEY, YOU HAVE TO HAVE CLEAR DESCRIPTIONS.

24 THEN HE GOES ON TO ADMIT THAT THEY WERE "PROVIDED TO ME BY  
25 COUNSEL."

1           AND HE SAID "I HAVE NOT REVIEWED OR INTERPRETED THE PATENT  
2           CLAIMS MYSELF AND DO NOT HAVE A PROFESSIONAL OPINION ON THAT  
3           MATTER."

4           HE'S WASHING HIS HANDS OF IT. HE'S NOT TAKING ANY  
5           RESPONSIBILITY FOR THIS.

6           SO HE GIVES -- WHAT HAPPENS WITH THESE SURVEY RESULTS?  
7           THEY'RE GIVEN TO ANOTHER APPLE EXPERT, DR. VELLTURO, AND LET'S  
8           JUST TALK FOR A MOMENT ABOUT DR. VELLTURO.

9           YOU KNOW, UNLIKE MANY EXPERTS YOU'RE GOING TO SEE WHO ARE  
10          FACULTY MEMBERS AT UNIVERSITIES, DR. VELLTURO IS NOT A MEMBER  
11          OF A FACULTY ANYWHERE. HE BASICALLY TESTIFIES FOR A LIVING.  
12          HE'S BASICALLY APPLE'S HOUSE PAID EXPERT WITNESS.

13          HE SAYS HE CANNOT REMEMBER EXACTLY HOW MANY TIMES HE'S  
14          BEEN HIRED BY APPLE TO COME INTO COURTROOMS AND TESTIFY AND HE  
15          THINKS IT'S MAYBE 10 TO 12 TIMES.

16          BUT HE TOOK DR. HAUSER'S SURVEY RESULTS AND RAN SOME  
17          NUMBERS, AND HE SAID THAT SYNCING COMPONENT CLAIM WHERE PEOPLE  
18          WERE TOLD YOU EITHER USE THE APPLE, YOU KNOW, PATENT OR, YOU  
19          KNOW, YOU'RE GOING TO HAVE TO WAIT AND THE WAIT COULD BE LONG  
20          OR SHORT, HE TOOK THE RESULTS OF THE SURVEY AND HE SAID, WELL,  
21          THAT SYNCING CLAIM IS WORTH \$724.9 MILLION.

22          SO THAT'S WHERE PART OF THAT OVER 2 BILLION THEY'RE  
23          SEEKING COMES FROM THAT CLAIM. AND ALL THE STEPS LEADING TO  
24          THAT NUMBER COLLAPSE BECAUSE THEY'RE ALL BASED ON DESCRIPTIONS  
25          WHICH ARE COMPLETELY UNFAIR AND INACCURATE.

1 WE HAVE -- WE'VE RETAINED AN EXPERT, DR. DAVID REIBSTEIN,  
2 WHO'S A PROFESSOR AT THE WARD SCHOOL OF BUSINESS AT THE  
3 UNIVERSITY OF PENNSYLVANIA. HE'S AN EXPERT IN THESE TYPES OF  
4 SURVEY, THEY'RE CALLED CONJOINT SURVEYS, AND HE SAYS IT'S  
5 COMPLETELY INAPPROPRIATE TO USE THIS TYPE OF SURVEY, A CONJOINT  
6 SURVEY, FOR A COMPLEX PRODUCT WHICH HAS LOTS AND LOTS OF  
7 FEATURES, THAT IT'S JUST A -- THEY SHOULDN'T HAVE USED IT IN  
8 THE FIRST PLACE.

9 HE HAD A REAL QUESTION: DID THE SURVEY PARTICIPANTS  
10 ACTUALLY UNDERSTAND WHAT THEY WERE BEING TOLD, UNDERSTAND THESE  
11 DESCRIPTIONS?

12 SO HE DID HIS OWN STUDY. HE RECRUITED SOME OTHER PEOPLE,  
13 JUST LIKE DR. HAUSER HAD, WHO HAD SAMSUNG PHONES. HE SHOWED  
14 THEM THE SAME VIDEOS, WE HAD THEM, SHOWED THEM THE SAME  
15 DESCRIPTIONS, AND, YOU KNOW, HAD THEM TAKE THE SAME TEST.

16 AND AFTERWARDS HE ASKED THEM, DID YOU UNDERSTAND? DID YOU  
17 UNDERSTAND THE DESCRIPTIONS IN THE VIDEOS? THEY ALL SAID, YES.

18 BUT THEN HE INTERVIEWED THEM AND IT TURNED OUT THEY DIDN'T  
19 UNDERSTAND AT ALL.

20 MANY OF THE PARTICIPANTS THOUGHT THAT WHEN IT DESCRIBED  
21 WORD CORRECTION, THEY THOUGHT THAT MEANT THE CHOICE WAS BETWEEN  
22 APPLE'S PATENT CLAIM AND HAVING TO GO BACK AND COMPLETELY  
23 RETYPE THE MISSPELLING.

24 SOME THOUGHT THE CHOICE WAS BETWEEN USING APPLE'S THREE  
25 PATENT SYNC CLAIM AND NOT HAVING ANY SYNCING AT ALL AND HAVING



1 TO GO TO ANOTHER DEVICE AND RE-ENTER THE INFORMATION.

2 SO THERE'S A REAL QUESTION. I THINK IT'LL BE IN YOUR  
3 MINDS WHEN YOU HEAR THE EVIDENCE AS TO WHETHER PEOPLE REALLY  
4 UNDERSTOOD THIS AT ALL.

5 I TOLD YOU BEFORE, APPLE ON ITS OWN DOES SURVEYS AS TO WHY  
6 PEOPLE BUY PHONES.

7 IF WE COULD LOOK AT SLIDE 50.

8 THIS IS AN INTERNAL APPLE STUDY, AND IF YOU LOOK AT THE  
9 U.S. ON THE LEFT-HAND SIDE, THE WHOLE THEORY OF APPLE'S CASE  
10 HERE IS PEOPLE BUY SAMSUNG PHONES BECAUSE OF THESE FIVE  
11 FEATURES AND THEY'RE SO IMPORTANT.

12 WHEN IT COMES TO IPHONES, PEOPLE WHO WANT AN IPHONE MODEL  
13 OR A SPECIFIC FEATURE, IT'S ONLY 16 PERCENT OF THE PEOPLE WHO  
14 BUY PHONES ACCORDING TO APPLE'S OWN DATA.

15 AND THEN IN THEIR DATA, THEIR SURVEY, THEY DRILL DOWN IN  
16 THE 16 PERCENT TO SEE WHAT IS THE FEATURE THAT THEY'RE MOST  
17 INTERESTED IN. IS IT OUR PHONE WITH WORD CORRECTION? IS IT  
18 SYNCING, OR WHAT IS IT?

19 IF WE CAN LOOK AT SLIDE 51.

20 THOSE 16 PERCENT, AS I'VE BEEN TELLING YOU, THEY'RE  
21 INTERESTED IN THINGS LIKE BIG FEATURES, WHAT'S THE WEIGHT, THE  
22 DISPLAY, THE THINNESS, IS THERE LTE, WHAT'S THE BATTERY LIFE?

23 APPLE KNOWS THESE ARE THE KINDS OF THINGS THAT DRIVE SALES  
24 OF PHONES.

25 ANOTHER EXAMPLE OF AN IMPORTANT PHONE FEATURE IS THE MAPS

1 APPLICATION. IN THE FALL OF 2012, APPLE HAD A BIG PROBLEM WITH  
2 ITS MAPS APPLICATION. THEY USED TO HAVE GOOGLE MAPS AND THEY  
3 DEVELOPED THEIR OWN MAP, APPLE MAPS FEATURE AND THEY PUT IT IN  
4 THE PHONE AND IT WAS A DISASTER. I MEAN, IT SENT PEOPLE IN  
5 CIRCLES TO DEAD ENDS. POLICE IN AUSTRALIA WARNED THAT THE  
6 APPLE MAPS FEATURE COULD KILL BECAUSE IT WOULD SEND PEOPLE INTO  
7 THE BARREN OUTBACK WHERE THERE WAS NO WATER.

8 THE PR FALLOUT FROM THAT WAS SO BAD THAT APPLE HAD TO  
9 APOLOGIZE TO CONSUMERS, AND TIM COOK WROTE A LETTER TO  
10 CONSUMERS ASKING FORGIVENESS AND SUGGESTED THAT THEY ALL SOLVE  
11 THE PROBLEM BY REINSTALLING GOOGLE MAPS.

12 BUT YET THAT PHONE THAT HAD THAT APPLE MAPS FEATURE, THE  
13 IPHONE 5, WAS THE HIGHEST SELLING IPHONE EVER.

14 WHAT DOES THAT SHOW US? A PHONE WITHOUT A WORKING MAPS  
15 APPLICATION CAN SELL. A PHONE WITHOUT THESE FIVE SMALL  
16 FEATURES, THAT WOULD SELL, TOO. THESE AREN'T THE THINGS THAT  
17 DRIVE SALES.

18 I NOW WANT TO TURN TO APPLE'S INFRINGEMENT CLAIMS. WE  
19 WILL SHOW YOU THAT SAMSUNG DID NOT USE OR INFRINGE FOUR OF THE  
20 CLAIMS AND THAT, IN FACT, IN ANY EVENT ALL FIVE ARE INVALID.  
21 THEY SHOULDN'T HAVE BEEN ISSUED IN THE FIRST PLACE. THERE WERE  
22 OTHER PEOPLE WHO THOUGHT OF THE IDEAS.

23 LET'S BEGIN WITH THE '414, THE BACKGROUND SYNCING. WE'VE  
24 SPOKEN ABOUT THIS SOME ALREADY.

25 AS I SAID, THIS REQUIRES THAT YOU HAVE THREE SEPARATE SYNC

1 COMPONENTS THAT ARE CONFIGURED TO DO SYNC.

2 YOU WILL HEAR IN THIS TRIAL FROM DR. CHASE, OUR EXPERT  
3 WITNESS, AND A GOOGLE ENGINEER PAUL WESTBROOK, WHO WAS INVOLVED  
4 IN DEVELOPING THIS, WHO WILL TELL YOU THAT ANDROID DOES THIS  
5 DIFFERENTLY, DOES NOT USE THIS THREE SYNC PROCESS. IT HAD BEEN  
6 DONE BEFORE. IT WAS DONE AT WINDOWS MOBILE. THERE'S A MAN BY  
7 THE NAME OF GARY HALL, WHO YOU WILL HEAR FROM, WHO'S A WINDOWS  
8 DEVELOPER WHO CALLED BACKGROUND SYNCING A DESIGN PILLAR OF  
9 WINDOWS MOBILE.

10 AND YOU WILL SEE THAT HE -- WINDOWS, MICROSOFT HAD THE  
11 ABILITY TO SYNC IN BACKGROUND, AND IT WOULDN'T FREEZE UP. AND  
12 THAT WAS ALL BEFORE APPLE'S PATENT.

13 AND THEY ALSO SYNCED WITH THREE SYNC COMPONENTS IN THE  
14 BACKGROUND, JUST LIKE APPLE CLAIMS TO DO.

15 YOU KNOW, THE PATENT AND TRADEMARK OFFICE, YES, THEY  
16 ISSUED A PATENT ON THIS. BUT THEY DIDN'T HAVE THIS INFORMATION  
17 WHEN IT WAS ISSUED. THEY DIDN'T HAVE THE INFORMATION ABOUT THE  
18 WINDOWS MOBILE IN FRONT OF THEM WHEN THEY ISSUED THIS PATENT.

19 YOU'LL HEAR THAT ANOTHER GREAT COMPANY WHO WAS DEVELOPING  
20 BACKGROUND SYNC BEFORE APPLE EVEN FILED FOR ITS PATENT, AND  
21 THAT COMPANY WAS USING BACKGROUND SYNC BEFORE APPLE'S PATENT  
22 EVEN ISSUED, AND THAT COMPANY IS GOOGLE. IT JUST STARTED  
23 DEVELOPING A SYNCING FEATURE BEFORE THE IPHONE EVER HIT THE  
24 MARKET.

25 AS A CLOUD COMPANY, GOOGLE IS WELL AHEAD OF APPLE IN

1 WIRELESS SYNCING. REMEMBER, YOU SAW THAT IN THE STEVE JOBS  
2 E-MAIL. HE SAID CATCH UP IN SYNCING.

3 AND, YOU KNOW, GOOGLE HAD THE ABILITY FROM THE BEGINNING,  
4 AS A CLOUD COMPANY, TO SYNC YOUR CONTACTS AND WIRELESS -- YOUR  
5 CONTACTS AND YOUR CALENDAR WIRELESSLY IN THE FIRST ANDROID  
6 PHONE.

7 THAT'S SOMETHING YOU COULDN'T DO IN THE FIRST IPHONE. YOU  
8 HAD TO PLUG IT INTO A COMPUTER TO SYNC UNTIL IOS 5 IN 2011.

9 THE '647 PATENT, THE ANALYZER SERVER PATENT, SOMETIMES  
10 CALLED QUICK LINKS OR LINKS TO STRUCTURES, THIS IS THE PATENT  
11 THAT, YOU KNOW, YOU CAN -- IT WILL HIGHLIGHT A PHONE NUMBER OR  
12 AN E-MAIL ADDRESS AND YOU CAN TAP ON IT AND IT'LL DO -- YOU  
13 KNOW, EXECUTE AN ACTION.

14 THIS DOES NOT COVER EVERY WAY OF DOING A CLICKABLE LINK.  
15 THE SIMPLE ABILITY TO CLICK ON A PHONE NUMBER AND MAKE A CALL,  
16 OR CLICK ON AN E-MAIL ADDRESS AND SEND AN E-MAIL, THAT HAS BEEN  
17 AROUND FOR A LONG TIME. APPLE DIDN'T INVENT THIS. THIS ISN'T  
18 SOMETHING THAT APPLE OWNS.

19 GOOGLE DESIGNED THE ANDROID SOFTWARE THAT RUNS ON THE  
20 BACKGROUND -- IN THE BACKGROUND DIFFERENTLY FOR ITS ANALYZER  
21 SERVER. YOU'LL HEAR THE EVIDENCE THAT GOOGLE -- THAT THE  
22 PATENT THAT APPLE HAS ON THIS PARTICULAR FEATURE REQUIRES  
23 SOMETHING CALLED AN ANALYZER SERVER, AND I WON'T GO INTO THE  
24 DETAILS ABOUT WHAT THAT'S ABOUT NOW, BUT IF YOU ONLY REMEMBER  
25 ONE THING I SAY ABOUT THIS PATENT, IT'S ANALYZER SERVER.

1           AND THE APPLE PATENT REQUIRES THAT THERE BE AN ANALYZER  
2           SERVER TO ACCOMPLISH THIS IN THE SOFTWARE.   AND WHEN YOU SEE  
3           WHAT GOOGLE DOES, WHAT ANDROID DOES, YOU'LL SEE THAT THERE IS  
4           NO ANALYZER SERVER.

5           APPLE TRIES TO SAY IT'S SOMETHING ELSE, THEY KNOW THERE  
6           NEEDS TO BE AN ANALYZER SERVER.   SO APPLE TRIES TO SAY IT'S  
7           SOMETHING ELSE.   I THINK THEY CALL IT A SOFTWARE LIBRARY.   THEY  
8           SAY, WELL, THAT'S REALLY AN ANALYZER SERVER.   BUT YOU'RE GOING  
9           TO SEE THAT THAT'S SOMETHING VERY, VERY DIFFERENT.   IN FACT,  
10          THEIR OWN INVENTOR WILL TELL YOU THAT SOFTWARE LIBRARIES ARE  
11          VERY DIFFERENT THAN AN ANALYZER SERVER.

12          YOU'LL ALSO HEAR IN THIS PATENT THAT THERE WAS PRIOR ART,  
13          THAT IT HAD BEEN DONE BEFORE.   THERE'S SOMETHING CALLED  
14          EMBEDDED BUTTONS THAT HAD BEEN INVENTED AT A VERY FAMOUS  
15          INSTITUTION HERE IN PALO ALTO CALLED XEROX PARK, PALO ALTO  
16          RESEARCH CENTER IN 1991 WHERE THEY -- THIS SAME TECHNOLOGY  
17          EXISTED.   IT'S NOT NEW.   IT'S NOT A PATENT THAT EVER SHOULD  
18          HAVE BEEN ISSUED.

19          THE '721, THE SLIDE TO UNLOCK, YOU KNOW, YOU WILL SEE THAT  
20          SAMSUNG, ANDROID HAVE USED LOTS OF DIFFERENT LOCK INTERFACES,  
21          VERY DIFFERENT KINDS OF MECHANISMS.

22          ONE IS CALLED THE PUZZLE DESIGN UNLOCK INTERFACE.

23          I MEAN, THE WAY IT WORKS, THE PIECES START UP IN THE  
24          CORNER AND YOU CAN MOVE THIS PIECE, THIS PIECE HERE, YOU CAN  
25          MOVE IT ALL AROUND.   IT'S NOT LIKE THE SLIDE TO UNLOCK WHERE

1 THERE'S A TRACK AND YOU GO FROM THIS POINT TO THIS POINT ALONG  
2 THE TRACK.

3 THIS PUZZLE PIECE, YOU CAN MOVE IT WITH YOUR FINGER ALL  
4 AROUND. IT UNLOCKS WHEN YOU GO INTO THE HOLE THERE. THIS IS  
5 VERY DIFFERENT. THIS IS NOT AN EFFORT TO COPY THE IPHONE.  
6 IT'S AN EFFORT TO COME UP WITH SOMETHING PLAYFUL, FUN. THE  
7 FOLKS AT SAMSUNG WERE TRYING TO DISTINGUISH THEMSELVES.

8 ANOTHER UNLOCK SCREEN THAT SAMSUNG USES IS A GALAXY 3  
9 RIPPLE WHICH YOU WILL SEE. UNFORTUNATELY, YOU CAN'T REALLY --  
10 THIS DOESN'T REPRODUCE IN A PHOTOGRAPH, BUT IT'S A REALLY COOL  
11 DESIGN WHERE IF YOU PUT YOUR FINGER ON THE SCREEN AND MOVE IT,  
12 IT'S LIKE WATER RIPPLES ACROSS THE FACE OF THE SCREEN AND YOU  
13 CAN MOVE UP, DOWN, ONE WAY OR ANOTHER, AND IT'S LIKE A LITTLE  
14 WAVE OF WATER GOING ACROSS THE STREET.

15 NO SLIDE TO UNLOCK, YOU KNOW, APPLE'S SLIDE TO UNLOCK.  
16 THEY DON'T ACCUSE THAT. THIS IS A BEST SELLING, YOU KNOW, THE  
17 GS III, GALAXY 3, BEST SELLING PHONES. WE'RE SELLING LOTS OF  
18 THESE PHONES WITHOUT USING ANY APPLE SLIDE TO UNLOCK FEATURE.

19 AND THEN YOU'RE GOING TO SEE THAT APPLE ITSELF HAS MOVED  
20 AWAY FROM THAT ORIGINAL SLIDE TO UNLOCK DESIGN IN THE LATEST  
21 IOS 7 SOFTWARE, YOU CAN GO FROM ANYWHERE ON THE LEFT-HAND SIDE  
22 OF THE SCREEN TO THE RIGHT-HAND SIDE OF THE SCREEN, ANYWHERE AT  
23 ANY POINT. THERE'S MUCH MORE FREEDOM OF MOVEMENT. YOU DON'T  
24 HAVE THAT LITTLE CHANNEL DOWN AT THE BOTTOM.

25 THE WORDS SLIDE TO UNLOCK ARE STILL ON THE PHONE, BUT

1 THEY'RE NOT CLAIMING THEY OWN THE WORDS. YOU CAN SEE THAT  
2 THEY'VE GONE IN A DIFFERENT DIRECTION ALTOGETHER.

3 IS THIS SOMETHING THAT'S REALLY WORTH MILLIONS AND  
4 MILLIONS OF DOLLARS? IS THIS WHY PEOPLE BUY SMARTPHONES?

5 THOSE ARE SOME OF THE DECISIONS THAT YOU'RE GOING -- THAT  
6 YOU WILL HAVE TO DECIDE.

7 WE'LL ALSO SHOW YOU OTHER PRIOR ART. YOU KNOW, THERE HAVE  
8 BEEN SLIDE TO UNLOCK MECHANISMS BEFORE. IT'S BEEN DONE BEFORE.

9 WHAT THEY CALL UNIVERSAL SEARCH, THIS INVOLVES THE -- THE  
10 APPLE PATENT ON UNIVERSAL SEARCH INVOLVES A VERY SPECIFIC WAY  
11 OF COMBINING LOCAL SEARCH RESULTS THAT ARE ON THE PHONE FROM,  
12 LIKE, YOUR CONTACTS OR YOUR CALENDAR AND THINGS LIKE THAT WITH  
13 RESULTS THAT COME FROM THE INTERNET.

14 NOW, I THINK IT'S FAIR TO SAY GOOGLE KNOWS SEARCH. AND  
15 THE ENGINEERS AT GOOGLE DON'T NEED TO TURN TO APPLE, YOU KNOW,  
16 WHEN THEY'RE BUILDING THEIR ANDROID SOFTWARE TO FIGURE OUT HOW  
17 TO DO SEARCH ON A PHONE. THEY'VE BEEN DOING SEARCH AT GOOGLE  
18 SINCE 1997. THEY'VE BEEN DOING, ON THE DESKTOP, THEY'VE BEEN  
19 DOING LOCAL SEARCH ON THE DESKTOP DEVICE CLEAR BACK TO 2004.

20 THE FUNCTIONS THAT APPLE IS CHALLENGING HERE IN ANDROID ON  
21 PHONES, THEY WERE ADDED TO ANDROID AND SAMSUNG PHONES IN 2009.

22 BUT, AGAIN, THIS SEARCH CAPABILITY THAT, YOU KNOW, THEY  
23 CLAIM TO HAVE A PATENT ON, IT'S NOT SOMETHING THAT THEY HAVE  
24 EVER USED. IT'S NEVER BEEN DONE ON THE IPHONE.

25 WE ASKED THE INVENTOR IN HIS DEPOSITION, AND HE SAYS HE

1 DOESN'T KNOW ANYONE WHO'S EVER USED THIS.

2 YOU KNOW, YOU HEARD SOMETHING THAT MR. MCELHINNY SAID THAT  
3 AFTER WE SUED THEM, THEY REMOVED IT. DO YOU REMEMBER THIS?  
4 AFTER WE SUED THEM, THEY REMOVED IT. CUSTOMERS COMPLAINED;  
5 THEY PUT IT BACK.

6 THAT WAS A COMPLETE DISTORTION, FRANKLY.

7 WHAT HAPPENED IS THEY SUED ON A DIFFERENT SEARCH PATENT.  
8 THEY SUED ON THE '604 PATENT, NOT THIS ONE, AND THEY WENT TO  
9 COURT AND THEY GOT AN INJUNCTION AGAINST OUR DOING THIS TYPE OF  
10 SEARCH. WE DIDN'T THINK IT WAS RIGHT. WE DIDN'T AGREE, BUT WE  
11 COMPLIED. AND SO WE -- IT WASN'T HARD TO DO. I MEAN, WE  
12 TURNED THAT OFF.

13 WE APPEALED IT, AND THE COURT OF APPEALS REVERSED AND SAID  
14 WE WERE RIGHT, APPLE WAS WRONG, WE'RE ENTITLED TO DO IT, AND  
15 THEN DROPPED THAT PATENT.

16 NOW, MR. MCELHINNY LEFT THAT OUT. HE DIDN'T TELL YOU THAT  
17 PART OF THE STORY.

18 NOW, WE DID PUT THAT FEATURE BACK IN THE PHONE, BACK IN  
19 ANDROID. GOOGLE DID THAT. SAMSUNG DID THAT, NOT BECAUSE IT'S  
20 A WILD, WILDLY POPULAR FEATURE THAT PEOPLE NEED TO SEARCH THE  
21 PHONES AND THE INTERNET AT THE SAME TIME.

22 IT TURNS OUT, YOU KNOW, GOOGLE CAN TRACK THIS. THE FOLKS  
23 AT GOOGLE WILL TELL YOU THAT WHEN YOU GET RESULTS FROM BOTH, ON  
24 THE INTERNET AND USING THIS PHONE AND THE FEATURE, IT'S  
25 SOMETHING LIKE ONE OUT OF 50 TIMES THAT PEOPLE TAP ON SELECT



1 THE PHONE RESULT. IT'S JUST NOT THAT BIG A DEAL. IT'S ONE OF  
2 MANY, MANY FEATURES AND WE INCLUDE IT AND WE THINK WE'RE  
3 ENTITLED TO INCLUDE IT.

4 WE DO IT IN A VERY, VERY DIFFERENT WAY THAN THEIR PATENT  
5 REQUIRES. THERE'S SOMETHING CALLED A HEURISTIC, WHICH I NEVER  
6 HEARD OF BEFORE I GOT IN THIS CASE, BUT THERE'S A RULE CALLED A  
7 HEURISTIC WHICH MEANS, IT'S AN ENGINEERING OR SOFTWARE TERM  
8 WHICH MEANS BASICALLY A RULE OF THUMB OR SOMETHING THAT'S GOOD  
9 ENOUGH. IT'LL GIVE YOU AN ANSWER TO THIS, GOOD ENOUGH, KIND OF  
10 RULE OF THUMB, AND THEIR PATENT REQUIRES THAT YOU MUST SEARCH  
11 IN TWO PLACES AND YOU MUST USE HEURISTICS TO SEARCH IN TWO  
12 PLACES, BOTH LOCALLY AND ON THE INTERNET.

13 AND THEY WILL POINT TO A HEURISTIC ON THE LOCAL SEARCH IN  
14 ANDROID, BUT THERE ISN'T ONE ON THE INTERNET BECAUSE GOOGLE  
15 USERS, NOT SURPRISINGLY, THE RESULTS ARE GOOGLE'S SUGGESTIONS  
16 THAT COME TO THE PHONE AND THAT'S NOT A HEURISTIC AT ALL. SO  
17 YOU'LL SEE THERE REALLY ISN'T INFRINGEMENT THERE.

18 THERE IS PRIOR ART, SOMETHING CALLED WAIS, W-A-I-S, WHERE  
19 AN M.I.T. PROFESSOR, DR. MARTIN RINARD, WILL TESTIFY ABOUT HOW  
20 THIS HAD BEEN DONE BEFORE.

21 AGAIN, WHEN THIS PATENT ISSUED, THE PATENT OFFICE DID NOT  
22 KNOW ABOUT WAYS.

23 FINAL CATEGORY OF DAMAGES I HAVEN'T HAD A CHANCE TO  
24 MENTION YET -- I'VE MENTIONED AT VARIOUS POINTS THE LOST  
25 PROFITS WHERE THEY SAY THEY WOULD HAVE SOLD MORE PHONES, AND WE

1 WOULD HAVE SOLD LESS BUT FOR THE USE OF THESE FEATURES. I'VE  
2 MENTIONED THE REASONABLE ROYALTY.

3 ANOTHER CATEGORY OF DAMAGES THEY'RE SEEKING IS THEY CALL  
4 BLACKOUT PERIOD OR OFF THE MARKET DAMAGES. AND BASICALLY THE  
5 THEORY OF THIS IS THEY SAY THEY'RE ENTITLED TO \$508 MILLION OF  
6 THE 2 BILLION BECAUSE THEY SAY, WELL, SAMSUNG WOULD HAVE TO  
7 TAKE UP TO FOUR MONTHS TO FIGURE OUT ANY ALTERNATIVE TO THREE  
8 OF THESE PATENTED FEATURES. IT WOULD TAKE US FOUR MONTHS, AND  
9 WE WOULD HAVE TO TAKE OUR PHONES OFF THE MARKET. WE COULDN'T  
10 BE SELLING THESE PHONES FOR FOUR MONTHS, AND WHILE SAMSUNG IS  
11 GONE, APPLE WILL SELL A LOT MORE PHONES. ALL RIGHT. SO THAT'S  
12 HOW THEY GET THE \$508 MILLION.

13 WELL, LET ME TELL YOU SOMETHING.

14 IF WE LOOK AT SLIDE 109.

15 THE IDEA THAT WE NEED FOUR MONTHS TO COME UP WITH SOME  
16 ALTERNATIVE IF, IN FACT, WE INFRINGE THESE AND THEY WERE  
17 INVALID -- THAT THEY WERE VALID IS JUST NONSENSE.

18 YOU HAVE SEEN THAT WE HAVE A WORD SUGGESTION FEATURE,  
19 WHICH THEY ADMIT IS NOT INFRINGING. IT'S BEEN ON THE SAMSUNG  
20 DART PHONE, WHICH IS AVAILABLE AND COULD BE USED AT ANY TIME.  
21 WE DON'T NEED FOUR MONTHS TO PUT THAT IN PHONES.

22 WE HAVE OTHER VERSIONS OF LOCK SCREENS, YOU KNOW, THE  
23 RIPPLE. YOU SAW THAT, THE ONE THAT'S LIKE THE WATER.

24 IT WOULD TAKE US, THE TESTIMONY WILL BE, AT MOST FOUR DAYS  
25 TO IMPLEMENT AN ALTERNATIVE TO THE ANALYZER SERVER PATENT.

1 SO THERE REALLY IS -- THERE WOULD BE NO BASIS OF ANY AWARD  
2 FOR OFF THE MARKET OR BLACKOUT PERIOD DAMAGES.

3 YOU'RE GOING TO HEAR, WITH RESPECT TO REASONABLE ROYALTY,  
4 WHICH I TALKED ABOUT A LITTLE BIT EARLIER, REMEMBER THE \$40.10  
5 A PHONE THEY'RE ASKING FOR WHICH TRANSLATED, IF YOU COUNT ALL  
6 THE PATENTS, TO SOMETHING LIKE A \$24,000 PHONE.

7 YOU'LL HEAR FROM DR. CHEVALIER, OUR EXPERT, AND SHE DID AN  
8 ANALYSIS ABOUT WHAT IS THE APPROPRIATE METHOD OF FIGURING OUT,  
9 IF ANY ROYALTY, REASONABLE ROYALTY, IF ANY ROYALTY WAS OWING  
10 HERE, WHAT IT WOULD BE.

11 AND SHE DID A STUDY. YOU'LL HEAR FROM HER, AND SHE  
12 CONCLUDES THAT FOR ALL FIVE OF THESE, 35 CENTS ALL OF THEM  
13 ALTOGETHER. SHE LOOKS AT REVIEWS OF SAMSUNG PRODUCTS AND  
14 WEBSITES ON AMAZON AND SHE SAYS THERE'S NO MENTION OF THESE  
15 FEATURES. IT'S NOT LIKE PEOPLE ARE WILDLY POPULAR -- EXCITED  
16 ABOUT THEM.

17 SHE COMPARED THE PROFITABILITY OF THE PRODUCTS WITH THE  
18 FEATURES AND WITHOUT THE FEATURES AND CONCLUDED THAT, YOU KNOW,  
19 AT LEAST THE WORD SUGGESTION IN SLIDE TO LOCK CLAIMS HAVE NO  
20 VALUE AT ALL BECAUSE SAMSUNG'S MOST PROFITABLE PHONES, THE  
21 S III AND THE GALAXY NOTE, DON'T -- AREN'T EVEN ACCUSED.

22 SHE LOOKS AT WHAT APPLE TOLD THE GOVERNMENT ITS SOFTWARE  
23 WAS WORTH. AND WHAT DID APPLE TELL THE GOVERNMENT IT TURNS OUT  
24 WAS COMPLETELY INCONSISTENT.

25 AM I RUNNING OUT OF TIME? THANK YOU.

1 SO YOU'RE GOING TO HEAR FROM HER THAT WHAT APPLE TELLS THE  
2 GOVERNMENT THE SOFTWARE IS WORTH IS VERY INCONSISTENT. SHE  
3 LOOKS AT APPLE'S OWN PRIOR REPRESENTATIONS TO COURTS ABOUT WHAT  
4 ITS SOFTWARE IS WORTH. SHE LOOKED AT, YOU KNOW, WHAT'S THE  
5 MARKETPLACE, WHAT ARE PEOPLE PREPARED TO PAY FOR APPLICATIONS  
6 ON SMARTPHONES.

7 THE MOST POPULAR ANDROID APPLICATION IS SOMETHING CALLED  
8 SWIFT KEY. PEOPLE PAY 24 CENTS A UNIT FOR THAT.

9 SO AFTER CONSIDERING ALL THOSE FACTORS, SHE SAYS 35 CENTS  
10 A UNIT, AND IF THERE'S A LUMP SUM ROYALTY PAYMENT, IF ONE WERE  
11 OWING -- AGAIN, WE DON'T THINK THERE'S ANY INFRINGEMENT, FOR  
12 FOUR OF THE FIVE PATENTS, WE DON'T THINK THEY'RE VALID, BUT IF  
13 THERE WERE INFRINGEMENT, IF THEY'RE VALID AND IF A ROYALTY WAS  
14 OWING, \$39.2 MILLION IS WHAT SHE SAYS IS THE MAXIMUM.

15 SO IN THE BRIEF TIME I'VE GOT LEFT, LET ME TALK A LITTLE  
16 BIT ABOUT SAMSUNG'S PATENT CLAIMS AGAINST APPLE. AND, FRANKLY,  
17 NORMALLY WE AT SAMSUNG DON'T SUE OVER PATENTS LIKE THESE.  
18 COUNSEL, I AGREE WITH MR. LEE ON THAT, WE DON'T ORDINARILY SUE  
19 ON PATENTS LIKE THESE.

20 YOU KNOW, IN THE PRE-HOLY WAR DAYS, WHAT WOULD HAPPEN IN  
21 THIS INDUSTRY IS THAT COMPANIES WOULD GET TOGETHER AND ENTER  
22 INTO CROSS-LICENSE AGREEMENTS FOR THEIR ENTIRE PORTFOLIOS.  
23 THEY WOULD WORK OUT A DEAL AND LEARN TO CO-EXIST.

24 THAT'S WHAT USED TO HAPPEN.

25 BUT WE DID GET SUED, AND SO WE THOUGHT IT WAS APPROPRIATE

1 TO DEFEND OURSELVES.

2 BUT WE UNDERSTAND HOW THIS HAPPENS SOMETIMES. PEOPLE END  
3 UP STEPPING ON EACH OTHER TOES WITH SIMILAR SOLUTIONS TO  
4 PROBLEMS.

5 I'M SORRY. I'M LOSING MY VOICE.

6 YOU HAVE ENGINEERS FOR THOSE SAME SCHOOLS, MAYBE STANFORD,  
7 BERKELEY, THEY STUDY ENGINEERING. THEY OWN THE SMARTPHONE  
8 BUSINESS. THEY GO TO WORK FOR COMPANIES LIKE GOOGLE AND APPLE.  
9 THEY FACE THE SAME PROBLEM. THEY'RE TRYING TO MAKE A PHONE  
10 EASY TO USE, TRYING TO MAKE IT EFFECTIVE, FAST, ADDRESSING THE  
11 SAME PROBLEMS, AND SOMETIMES THEY MAY END UP COMING UP WITH  
12 SIMILAR SOLUTIONS AND END UP STEPPING ON EACH OTHER TOES. THAT  
13 SOMETIMES HAPPENS.

14 AND IN THAT SAME WAY, APPLE HAS STEPPED ON SAMSUNG'S TOES  
15 BY USING SAMSUNG'S VIDEO TRANSMISSION AND VIDEO ALBUM PATENTS.

16 AND WHEN THAT HAPPENS, AND IT DOES HAPPEN, IT'S NOT A HOLY  
17 WAR, OR IT SHOULDN'T BE. IT'S A SIMPLE THAT THE LAW PROVIDES A  
18 REMEDY AND IT'S A SIMPLE ECONOMIC TRANSFER, THAT THERE SHOULD  
19 BE A PAYMENT FROM THE COMPANY THAT WAS USING THE TECHNOLOGY  
20 THAT DIDN'T HAVE A RIGHT TO, TO THE COMPANY THAT OWNED THE  
21 TECHNOLOGY AND DID HAVE A RIGHT TO IT.

22 IT'S NOT ABOUT PUNISHING. IT'S NOT ABOUT PUNISHING THE  
23 WRONG DOER.

24 BUT HERE YOU'LL SEE APPLE IS DOING SOMETHING DIFFERENT.  
25 IT'S SEEKING MASSIVE DAMAGES ON THE FICTION THAT THEY'VE LOST

1 SALES BECAUSE OF VERY SMALL FEATURES THAT YOU WILL LEARN HAVE  
2 NO IMPACT ON SALES AT ALL.

3 NOW, I'M GOING TO SHOW YOU HOW WE CALCULATE THE ROYALTY  
4 THAT IS OWING FOR THEIR INFRINGEMENT OF OUR TWO PATENTS, AND WE  
5 WILL DO IT REASONABLY.

6 AND I'LL JUST NOTE, THEY'RE NOT CHALLENGING THE VALIDITY  
7 OF EITHER ONE OF THEIR PATENTS. BOTH OF THOSE PATENTS ARE  
8 DEEMED VALID FOR PURPOSES OF ALL YOUR DECISION MAKING.

9 SO FIRST THE FACETIME PATENT FROM THE '239, AND THIS  
10 RELATES TO TRANSMITTING COMPRESSED VIDEO FOOTAGE. AND THIS IS  
11 A PATENT THAT WAS WAY AHEAD OF ITS TIME.

12 LONG BEFORE MOST PEOPLE EVEN HAD MOBILE PHONES, THE  
13 INVENTORS OF THIS PATENT FIGURED OUT A WAY TO TRANSMIT VIDEO  
14 FROM REMOTE LOCATIONS BY COMPRESSING VIDEO IN REAL TIME SO IT  
15 COULD TRANSMIT QUICKLY WITHOUT INTERRUPTION.

16 AND YOU WILL HEAR FROM OUR EXPERT, DR. SCHONFELD, DR. DAN  
17 SCHONFELD FROM THE UNIVERSITY OF CHICAGO WHO WILL EXPLAIN TO  
18 YOU THAT APPLE HAS, IN FACT, INFRINGED THIS PATENT. YOU KNOW,  
19 THERE ARE TWO KEY TERMS IN THIS PATENT. THE FIRST IS THAT  
20 IT -- IT SAYS IT INCLUDES A COMPUTER WITH A VIDEO CAPTURE  
21 MODULE TO CAPTURE THE COMPRESSED VIDEO IN REAL TIME. APPLE'S  
22 PRODUCTS, AS WELL AS SAMSUNG PRODUCTS, INCLUDE BOTH CAMERAS AND  
23 COMPONENTS THAT CAPTURE VIDEO.

24 THE SECOND TERM IS THERE MUST BE A MEANS FOR TRANSMISSION  
25 OF THE VIDEO. DR. SCHONFELD WILL SHOW YOU THAT THERE WAS A

1 MEANS FOR -- THAT BOTH THOSE TERMS ARE SATISFIED.

2 THE APPLE FUNCTIONALITIES THAT INFRINGE INCLUDE FACETIME,  
3 FACETIME FEATURE INFRINGES VIDEO, THROUGH VIDEO CONFERENCING.  
4 BY THE WAY, A FEATURE THAT APPLE HAS PROMOTED VERY, VERY  
5 HEAVILY, UNLIKE, YOU KNOW, THE FIVE MINOR SOFTWARE FEATURES  
6 THAT THEY'RE SUING SAMSUNG ON.

7 AND IT ALSO INFRINGES BY THE ABILITY ON APPLE -- THE  
8 FUNCTIONALITY THAT PERMITS YOU TO TAKE VIDEOS AND TRANSMIT THEM  
9 USING E-MAIL AND MESSAGING ON THE IPHONE.

10 NOW, MR. LEE MADE A BIG TO DO ABOUT THE FACT THAT WE  
11 BOUGHT THIS PATENT. IT'S TRUE. WE DID BUY THIS PATENT. WE  
12 BOUGHT IT FROM A VERY CREATIVE FAMILY, THE FREEMANS WHO LIVE IN  
13 TULSA, OKLAHOMA.

14 IT'S KIND OF AN INTERESTING STORY BEHIND IT. THEY  
15 ORIGINALLY INVENTED THIS IN ORDER TO, YOU KNOW -- THEY LIVE IN  
16 AN AREA WHERE THERE'S LOTS OF TORNADOS, AND THEY HAD THE  
17 ABILITY TO TRANSFER VIDEO OF TORNADOS TO TV STATIONS AND THINGS  
18 LIKE THAT.

19 WHAT'S IMPORTANT TO KNOW IS IT'S NOT IMPORTANT. IT'S NOT  
20 A DEFENSE IN A PATENT CASE THAT A PATENT HAS BEEN PURCHASED.  
21 APPLE PURCHASES PATENTS, VOICE RECOGNITION SOFTWARE FROM SIRI.  
22 I MEAN, THAT'S ABSOLUTELY IRRELEVANT WHETHER OR NOT THE PATENT  
23 WAS PURCHASED.

24 SAMSUNG CHOSE THIS PATH BECAUSE OF HOW IMPORTANT AND  
25 INNOVATIVE IT WAS.

1           THEY ALSO TOLD YOU THAT THE PATENT HAS NOW EXPIRED.  
2           THAT'S TRUE. THAT ALSO DOESN'T MATTER. WE'RE SEEKING DAMAGES  
3           FOR THE PERIOD WHEN THE PATENT WAS ACTIVE, WHICH IS PERFECTLY  
4           APPROPRIATE, PERFECTLY RIGHT. WE'RE ENTITLED TO DO THAT.

5           THE OTHER PATENT, THE '449, VIDEO ALBUMS PATENT, THIS  
6           RELATES TO AN INVENTION THAT THE COMPANY HITACHI CAME UP WITH  
7           BACK IN 1997 WHERE THEY CAME UP WITH A REVOLUTIONARY DIGITAL  
8           CAMERA THAT WOULD PERMIT YOU TO COMPRESS AND STORE HUNDREDS OF  
9           PHOTOGRAPHS AND VIDEOS.

10          IN EARLIER CAMERAS, YOU COULD ONLY STORE LIKE TEN PICTURES  
11          AND YOU COULDN'T STORE ANY VIDEOS AT ALL. THIS HITACHI CAMERA  
12          USED CUTTING EDGE TECHNOLOGY TO PERMIT YOU TO STORE SO MANY ON  
13          THE CAMERA THAT YOU COULDN'T KEEP TRACK OR FIND OUT WHERE THEY  
14          WERE.

15          SO THIS IS KIND OF A NIFTY, IF YOU WANT, EASY TO USE  
16          FEATURE THAT HITACHI INVENTED. IT SOLVED THE PROBLEM BY  
17          BUILDING FOLDERS RIGHT INTO THE CAMERA TO MAKE IT EASIER TO  
18          MANAGE AND TO LOCATE THE PHOTOS AND THE VIDEOS.

19          YOU'LL SEE THAT ON THE LEFT-HAND SIDE HERE, YOU'LL SEE ONE  
20          OF THOSE FIGURES FROM THE PATENT. YOU'LL SEE THERE'S A LIST OF  
21          ALBUMS HERE. IT'S KIND OF AN ENGINEER'S DRAWING, AND PART OF  
22          THE PATENT IS THAT YOU ACTUALLY NUMBER, YOU CAN NUMBER THE  
23          ACTUAL NUMBER OF PHOTOGRAPHS THAT ARE THERE.

24          AND THEN ON THE RIGHT-HAND SIDE, YOU'LL SEE THE ALBUMS,  
25          YOU KNOW, SAME FUNCTIONALITY ON THE IPHONE.



1 AND DR. KEN PARULSKI, WHO HAS AN ADVANCED DEGREE FROM  
2 M.I.T., WIDELY RECOGNIZED PIONEER IN DIGITAL PHOTOGRAPHY, WILL  
3 COME HERE AND WALK YOU THROUGH THESE CLAIMS AND SHOW YOU HOW  
4 APPLE INFRINGES THIS PATENT.

5 SO BECAUSE THESE TWO PATENTS ARE INFRINGED, SAMSUNG IS  
6 ENTITLED TO DAMAGES, AND THOSE DAMAGES, AGAIN, TAKE THE FORM OF  
7 A REASONABLE ROYALTY.

8 UNLIKE THE MINOR SOFTWARE PATENTS APPLE HAS SUED ON, THE  
9 VIDEO PATENT, THE '239 PATENT INCLUDES VERY IMPORTANT FEATURES  
10 THAT RELATE TO THE TRANSMISSION OF VIDEO WHICH APPLE HAS VERY  
11 HEAVILY PROMOTED, FACETIME OVER CELLULAR.

12 ALSO E-MAIL, TRANSMISSION OVER E-MAIL, THROUGH TEXT.

13 THIS IS SOMETHING THAT'S BEEN VERY -- THAT IS, IN FACT,  
14 SOMETHING VERY IMPORTANT. IT'S SOMETHING THAT IS ADVERTISED,  
15 AND YOU LOOK AT THOSE -- I SHOWED YOU THE IPHONE CONSUMER  
16 SURVEY, WHAT FEATURES PEOPLE FOCUS ON. I DON'T KNOW IF YOU SAW  
17 IT. FACETIME WAS ONE OF THEM. THAT'S ONE THAT ACTUALLY DOES  
18 RISE TO THE LEVEL OF SOMETHING PEOPLE TAKE NOTE OF.

19 THE OTHER, THE VIDEO ALBUMS PATENT, IT'S A MORE -- YOU  
20 KNOW, IT'S A USEFUL BUT MORE LIMITED FEATURE, BUT IT'S  
21 VALUABLE.

22 AND WE HAVE DR. KEARL, JAMES KEARL, WHO'S A TRAINED  
23 ECONOMIST AT M.I.T., WHO DETERMINED THAT APPLE WOULD HAVE PAID  
24 \$6.9 MILLION FOR A LICENSE IN A NEGOTIATION.

25 AND, YOU KNOW, IT'S -- I FOUND MR. LEE'S ARGUMENT

1 SURPRISING, THE FACT THAT, YOU KNOW, WE'RE SUING AND ONLY  
2 ASKING FOR \$158,000, OR WE'RE ONLY ASKING FOR \$6.78 MILLION  
3 SOMEHOW MEANS THAT WE DON'T RESPECT PATENTS OR THAT WE DON'T  
4 CARE ABOUT PATENTS, THAT THE SUGGESTION SEEMED TO BE THAT IF  
5 YOU AREN'T ASKING FOR BILLIONS, YOU'RE NOT TAKING PATENTS  
6 SERIOUSLY.

7 YOU WILL SEE -- THE EVIDENCE IN THIS CASE WILL SHOW YOU  
8 THAT THEIR BILLION DOLLAR NUMBERS ARE COMPLETELY UNSUPPORTED.  
9 THEY ALL TIE BACK TO THAT UNRELIABLE HAUSER SURVEY, AND THEY'RE  
10 PUTTING THOSE NUMBERS OUT THERE JUST TO TRY TO GET THEM IN YOUR  
11 HEAD.

12 AND WE WILL SHOW YOU HOW PROPERLY TO CALCULATE A ROYALTY  
13 ON THESE, YOU KNOW, ON THESE PATENTS WHICH APPLE HAS INFRINGED.

14 DR. KEARL CALCULATED THESE DAMAGES. IF WE LOOK AT SLIDE  
15 125. HE STARTED WITH SOME REAL WORLD DATA, AND HE HAD SOME  
16 ACTUAL DATA THAT HE COULD RELY ON.

17 THERE WAS A TIME WHEN FACETIME WAS FIRST INTRODUCED WHERE  
18 APPLE ACTUALLY SOLD THAT AS AN APP ON THE MAC, AND IT WAS A  
19 HUGE SUCCESS . PEOPLE BOUGHT IT. IT COST 99 CENTS.

20 SO THERE'S A POINT, YOU KNOW, A REAL WORLD DATA POINT THAT  
21 DR. KEARL COULD WORK WITH, WHAT WOULD PEOPLE PAY FOR THIS?  
22 WHAT IS IT WORTH?

23 AND YOU'LL SEE, HE WILL EXPLAIN TO YOU HOW HE THEN DID  
24 MARKET STUDIES COMPARING THAT TO OTHER FEATURES, OVER TEXTING,  
25 OVER E-MAIL IN THE VIDEO ALBUMS PATENT AND CAME UP WITH THE

1 NUMBERS WHICH I SHOWED YOU.

2 NOW, HERE'S THE IRONY: ALTHOUGH THE 6.78 MILLION THAT  
3 SAMSUNG IS ASKING FOR FOR THESE TWO PATENTS IS A FRACTION OF  
4 WHAT APPLE IS ASKING FOR ON ITS PATENTS, APPLE SAYS THAT 6.78  
5 MILLION IS FAR TOO MUCH.

6 APPLE IS SAYING THAT. IT'S TELLING YOU THAT EVEN  
7 ASSUMING, EVEN ASSUMING IT INFRINGES THE '239 PATENT BY USING  
8 FACETIME, A FEATURE THAT APPLE VERY HEAVILY PROMOTED AS A  
9 MARQUEE FEATURE, IT SHOULD PAY LESS THAN 6.78 MILLION.

10 AT THE SAME TIME, FOR MUCH MORE MINOR FEATURES, THEY'RE  
11 SEEKING BILLIONS. IT'S THAT SIMPLE.

12 ONE THING THEY'RE CORRECT ON. THESE TYPES OF FEATURES  
13 AREN'T WORTH HUNDREDS OF MILLIONS OF DOLLARS. THEY DON'T MAKE  
14 A SIGNIFICANT DIFFERENCE IN SALES. THEY HAVE VERY LIMITED  
15 VALUE. IN THIS CASE, DR. KEARL DETERMINED THAT THAT WAS \$6.78  
16 MILLION.

17 SO JUST TO WRAP UP, YOU'VE HEARD APPLE'S LAWYERS SAY THAT  
18 SAMSUNG IS TAKING SALES AWAY FROM APPLE BECAUSE IT HAS THESE  
19 FEATURES THAT CUSTOMERS WANT AND THAT IF SAMSUNG DIDN'T HAVE  
20 THESE FEATURES, SAMSUNG WOULD SELL FEWER PHONES AND APPLE WOULD  
21 SELL MORE.

22 APPLE ITSELF DOESN'T EVEN USE FOUR OF THE FIVE. THEY  
23 AGREE AS TO THREE. WE HAVE TO PROVE TO YOU THE FOURTH, THE  
24 SLIDE TO UNLOCK.

25 YOU CAN'T GET THOSE FEATURES BY BUYING AN APPLE PRODUCT.

1 THEY'RE NOT IN A PRODUCT. THEY DON'T USE THEM.

2 APPLE WANTS YOU TO BELIEVE THAT THESE CLAIMS ARE WORTH  
3 OVER \$2 BILLION EVEN THOUGH THEY ARE NOT VALUABLE ENOUGH FOR  
4 APPLE TO USE.

5 A VERY MUCH MORE COMMON SENSE EXPLANATION AS TO WHY A  
6 PATENT CLAIM IS NOT ADVERTISED OR LICENSED OR USED IS NOT  
7 BECAUSE IT'S WORTH VERY MUCH, BUT BECAUSE IT'S WORTH VERY  
8 LITTLE.

9 THE CLAIMS, THESE APPLE PATENT CLAIMS ARE ORDINARY WAYS TO  
10 DO ORDINARY THINGS THAT HAVE BEEN, CAN BE, AND ARE BEING DONE  
11 DIFFERENTLY.

12 ANDROID IS IPHONE'S MAIN COMPETITOR, AND GOOGLE IS AN  
13 APPLE OBSESSION. APPLE'S WHOLE FOCUS IS TO BEAT GOOGLE'S  
14 ANDROID, AND THAT IS THE PURPOSE OF THIS LAWSUIT.

15 APPLE HERE IS SINGLING OUT, SINGLING OUT, FROM ALL OF THE  
16 ANDROID POWERED HANDSET MANUFACTURERS, IT'S SINGLING OUT THE  
17 MOST SUCCESSFUL MANUFACTURER'S PRODUCTS THAT RUN ON ANDROID,  
18 SAMSUNG, AND TRYING TO CAPTURE THE PROFITS IT MADE FROM SELLING  
19 ANDROID CELL PHONES AND TABLETS.

20 HOW DO YOU KNOW THIS IS TRUE, THIS GALAXY NEXUS PHONE  
21 WHICH THEY'RE SUING OVER AND THEY ACCUSE? NOTHING IN THE  
22 HARDWARE. THEY DON'T ACCUSE ANYTHING IN THE HARDWARE. THE  
23 SOFTWARE IS PURE ANDROID.

24 APPLE IS TARGETING NEXUS'S PURE SAMSUNGLESS SOFTWARE.  
25 THAT'S WHAT THIS LAWSUIT IS ABOUT.

1 JUST HAVING ANDROID DID NOT GUARANTEE SAMSUNG'S SUCCESS.  
2 THERE ARE MANY DIFFERENT MANUFACTURERS THAT MAKE ANDROID  
3 PRODUCTS. SAMSUNG'S UNIQUE SUCCESS IN THE ANDROID WORLD WAS  
4 NOT IN THE THINGS THAT WERE THE SAME, BUT THE THINGS THAT WERE  
5 DIFFERENT, LIKE THE INNOVATION, QUALITY, SELECTION, BUSINESS  
6 STRATEGY, OFFERING A LARGE VARIETY OF DIFFERENT PHONES AT MANY  
7 DIFFERENT PRICE POINTS, THE PROMOTION, THE DEVELOPMENT, THE  
8 BRAND, ALL OF THE RESULTS OF THE HARD WORK FROM THE PEOPLE AT  
9 SAMSUNG.

10 LOTS OF PEOPLE, LOTS OF COMPANIES USE ANDROID, BUT NONE OF  
11 THEM ARE SELLING NEARLY AS MANY PHONES AS SAMSUNG.

12 SAMSUNG'S SUCCEEDS WHERE OTHERS HAVEN'T BECAUSE OF  
13 SAMSUNG'S HARDWARE.

14 IT IS THE SAMSUNG DIFFERENCE -- IT'S THE SAMSUNG  
15 DIFFERENCE MAKING CONTRIBUTIONS THAT SELL PHONES AND MAKE IT  
16 FAR AND AWAY THE MOST SUCCESSFUL ANDROID -- THE MOST SUCCESSFUL  
17 MANUFACTURER IN THE ANDROID WORLD.

18 APPLE DOES NOT ACCUSE THOSE DIFFERENT MAKING HARDWARE  
19 FEATURES OF INFRINGEMENT. APPLE IS NOT ENTITLED TO THE PROFIT  
20 ON THESE PHONES, PHONES WHICH PEOPLE BOUGHT BECAUSE THEY CARE  
21 ABOUT BIG SCREENS, STYLUSES, SUPER HD, AMOLED SCREENS, HIGH  
22 QUALITY CAMERAS, AND THE OTHER THINGS THAT YOU COULD ONLY GET  
23 ON THAT SAMSUNG PHONE. THE MONEY THAT CONSUMERS SPENT SHOULD  
24 BE LEFT WHERE THEY SPENT IT.

25 THANK YOU VERY MUCH.

1 THE COURT: OKAY. THE TIME IS NOW 2:21.

2 LET'S TAKE A 15 MINUTE BREAK AND WHEN WE COME BACK, APPLE  
3 WILL CALL ITS FIRST WITNESS.

4 ALL RIGHT. THANK YOU. PLEASE DON'T RESEARCH OR DISCUSS  
5 THE CASE.

6 (JURY OUT AT 2:21 P.M.)

7 THE COURT: OKAY. THE RECORD SHOULD REFLECT THE  
8 JURORS HAVE LEFT THE COURTROOM.

9 MR. SELWYN, HAVE YOU HAD A CHANCE TO -- PLEASE TAKE A  
10 SEAT -- HAVE YOU HAD A CHANCE TO TAKE A LOOK AT THOSE THREE  
11 PAGES?

12 MR. SELWYN: WE HAVE. WE HAVE NO OBJECTION TO THOSE  
13 THREE PAGES OF EXHIBIT 14 BEING DISPLAYED PUBLICLY.

14 THE COURT: OKAY. AND THAT'S DX 413.

15 MR. SELWYN: DX 413. WE UNDERSTAND THAT THOSE ARE  
16 THE ONLY THREE PAGES FROM THAT DOCUMENT OR LIKE DOCUMENT THAT  
17 THEY INTEND TO USE.

18 THE COURT: OKAY. SO THERE'S NO OBJECTION ANYMORE.

19 ALL RIGHT. THANK YOU.

20 I'M GOING TO RETURN THIS TO YOU. THANK YOU.

21 (RECESS FROM 2:22 P.M. UNTIL 2:37 P.M.)

22 (JURY IN AT 2:37 P.M.)

23 THE COURT: OKAY. EVERYONE PLEASE TAKE YOUR SEATS.

24 WELCOME BACK. PLEASE TAKE A SEAT.

25 YOU HAVE JUST RECEIVED A PHOTO OF THE FIRST WITNESS. YOU

1 WILL GET A PHOTO FOR EVERY WITNESS, AND THERE IS A TAB IN YOUR  
2 JURY BINDER THAT SAYS WITNESS PHOTOS. THAT'S WHERE YOU CAN  
3 INCLUDE THEM. YOU'RE FREE TO TAKE NOTES.

4 THIS IS JUST TO HELP YOU REMEMBER DURING YOUR  
5 DELIBERATIONS, WHICH IS BE A NUMBER OF WEEKS FROM NOW, IT JUST  
6 ENABLES YOU TO PUT A NAME WITH A FACE AND PERHAPS YOUR NOTES,  
7 OR AT LEAST YOUR MEMORIES OF WHAT THAT PERSON SAID.

8 ALL RIGHT. PLEASE CALL YOUR FIRST WITNESS.

9 MR. MCELHINNY: APPLE CALLS AS ITS FIRST WITNESS,  
10 YOUR HONOR, MR. PHILIP SCHILLER.

11 **(PLAINTIFF'S WITNESS, PHILIP WILLIAM SCHILLER, SWORN.)**

12 THE WITNESS: I DO.

13 THE CLERK: WOULD YOU HAVE A SEAT, PLEASE.

14 AND PULL THE MICROPHONE TOWARDS YOU AND STATE YOUR NAME,  
15 PLEASE, AND SPELL IT.

16 THE WITNESS: PHILIP WILLIAM SCHILLER. P-H-I-L-I-P,  
17 W-I-L-L-I-A-M, S-C-H-I-L-L-E-R.

18 THE COURT: ALL RIGHT. THE TIME IS NOW 2:38. GO  
19 AHEAD, PLEASE.

20 **DIRECT EXAMINATION**

21 BY MR. MCELHINNY:

22 Q. MAKE SURE YOU'RE COMFORTABLE. I DON'T WANT TO HAVE YOU  
23 AWKWARD.

24 READY?

25 A. YES.

Q. LET'S DO IT AGAIN. PLEASE INTRODUCE YOURSELF TO THE JURY,  
MR. SCHILLER.

A. MY NAME IS PHILIP SCHILLER.

Q. BY WHOM ARE YOU EMPLOYED, SIR?

A. APPLE.

Q. YOU'RE GOING TO HAVE TO GET THAT MICROPHONE UP THERE.

A. APPLE.

Q. THERE YOU GO. WHAT IS YOUR POSITION, YOUR CURRENT  
POSITION WITH APPLE?

A. SENIOR VICE-PRESIDENT OF WORLDWIDE MARKETING.

Q. AND JUST AT A HIGH LEVEL, WHAT ARE YOUR RESPONSIBILITIES?

A. I'M RESPONSIBLE FOR ALL THE MARKETING ORGANIZATIONS AT  
APPLE.

Q. DOES APPLE HAVE SOMETHING WHICH IT CALLS THE EXECUTIVE  
TEAM, SIR?

A. YES.

Q. AND ARE YOU A MEMBER OF APPLE'S EXECUTIVE TEAM?

A. I AM.

Q. AND WHAT IS THE EXECUTIVE TEAM AT APPLE?

A. THE EXECUTIVE TEAM IS MADE UP OF NINE OF US THAT RUN --  
THAT ARE RESPONSIBLE FOR ALL OF THE FUNCTIONS AT APPLE, AND  
COLLECTIVELY WE MANAGE APPLE.

Q. HOW LONG HAVE YOU PERSONALLY WORKED AT APPLE, SIR?

A. SOMETHING OVER 23 YEARS.

Q. AS OF TODAY TO WHOM DO YOU REPORT AT APPLE?



1 A. THE CEO, TIM COOK.

2 Q. LET'S GO BACK. CAN YOU GIVE US A LITTLE BIT MORE DETAILED  
3 VIEW OF WHAT YOUR JOB RESPONSIBILITIES ARE?

4 A. YES. I'M RESPONSIBLE, AGAIN, FOR ALL THE MARKETING  
5 FUNCTIONS. SO THAT'S PRODUCT MARKETING, INTERNATIONAL  
6 MARKETING, BUSINESS MARKETING, EDUCATION MARKETING, OR  
7 DEVELOPER PROGRAMS, CUSTOMER RESEARCH, PRODUCT FINANCE.

8 I THINK THOSE ARE THE MAJORITY OF THE ORGANIZATIONS.

9 Q. AND AS PART -- IS MARKETING THE SAME AS OR DIFFERENT THAN  
10 PUBLIC RELATIONS?

11 A. IT'S -- AT APPLE IT'S DIFFERENT. I THINK IN GENERAL IN  
12 THE WORLD THEY CONSIDER IT ONE OF THE MANY PARTS OF MARKETING  
13 AT APPLE. WE SEPARATE THE PUBLIC RELATIONS TEAM FROM THE REST  
14 OF MARKETING.

15 Q. AND IS MARKET -- THESE ARE THE LESS ONES I HAD TO LEARN.  
16 IS MARKETING THE SAME AS OR DIFFERENT THAN SALES.

17 A. VERY DIFFERENT FROM SALES.

18 Q. CAN YOU THEN EXPLAIN THE RELATIONSHIP BETWEEN THOSE THREE  
19 FOR US?

20 A. LET'S SEE. PUBLIC RELATIONS IS A TEAM THAT WORKS WITH THE  
21 PRESS ON ALL OF THE THINGS THAT THEY HAVE QUESTIONS ABOUT, THE  
22 STORIES THEY'RE WRITING, AND HOW INTERFACE, AND HAVE  
23 RELATIONSHIPS WITH MEMBERS OF THE PRESS.

24 AND MARKETING COVERS, AT APPLE, A HUGE VARIETY OF THESE  
25 MARKETING DISCIPLINES, LIKE WORKING ON A PRODUCT AND ALL OF THE

1 FEATURES THAT CUSTOMERS MIGHT WANT, AND WORKING ON THE WEBSITE.  
2 APPLE.COM IS PART OF MY MARKETING COMMUNICATIONS TEAM OR  
3 WORKING TO LAUNCH A PRODUCT AROUND THE WORLD. THOSE ARE ALL  
4 THINGS IN THE MARKETING DOMAIN.

5 AND THEN SALES IS RESPONSIBLE FOR THE CHANNELS THAT OUR  
6 PRODUCT IS OFFERED THROUGH AND SALES TO BOTH END USERS, AS WELL  
7 AS ITS OTHER PARTNERS WHO THEN SELL OUR PRODUCT.

8 PERSONALLY, I LIKE TO THINK OF SALES AS VERY SHORT-TERM  
9 FOCUS, WHAT DO I HAVE TO DO TO GET A PRODUCT FROM HERE TO THERE  
10 AND HELP SOMEBODY BUY IT RIGHT NOW?

11 WHERE MARKETING WE TRY TO HAVE A LONGER HORIZON LINE TO  
12 LOOK FURTHER OUT AT WHAT PEOPLE THINK, WHAT TRENDS ARE  
13 HAPPENING, WHAT WE MIGHT DO TO IMPROVE OUR PRODUCTS AND SO ON.  
14 SO IT'S A LONGER VIEWPOINT.

15 Q. DOES APPLE HAVE A PROCESS BY WHICH IT DEVELOPS NEW  
16 PRODUCTS?

17 A. YES, WE DO.

18 Q. AND DO YOU HAVE A FANCY NAME FOR THAT PROCESS?

19 A. YES. IT'S CALLED THE APPLE NEW PRODUCT PROCESS.

20 Q. DOES MARKETING PLAY A ROLE IN THAT PROCESS?

21 A. WE DO. THE APPLE NEW PRODUCT PROCESS, OR ANPP, IS A  
22 CROSS-FUNCTIONAL ORGANIZATION MADE UP OF PEOPLE FROM ALL THE  
23 TEAMS, MARKETING, HARDWARE ENGINEERS, SOFTWARE ENGINEERS,  
24 FINANCE, OPERATIONS, SUPPORT.

25 AND COLLECTIVELY THIS CROSS-FUNCTIONAL TEAM WORKS ON

1       WHATEVER PRODUCT THEY'RE WORKING ON.  AND EVERY PRODUCT FOLLOWS  
2       THIS PROCESS.

3               SO THAT'S THE APPLE NEW PRODUCT PROCESS.

4       Q.    AND WHAT IS THE ROLE OF MARKETING AS SUCH IN THE NEW  
5       PRODUCT PROCESS AT APPLE?

6       A.    I THINK THE SIMPLEST WAY TO LOOK AT OUR ROLE IS TO  
7       REPRESENT THE CUSTOMER, THAT WE'RE ON THAT TEAM TO UNDERSTAND  
8       WHAT CUSTOMERS WANT AND NEED AND OFTEN IN WORKING ON THE  
9       PRODUCT YOU'LL HAVE MANY CHOICES TO MAKE BETWEEN DIFFERENT  
10      TECHNOLOGIES, DIFFERENT THINGS YOU WANT TO DO WITH THE PRODUCT.

11             AND THE MARKETING TEAM CAN ADD A LOT OF INSIGHT AND  
12      DIRECTION BASED ON OUR KNOWLEDGE OF WHAT CUSTOMERS, IF THEY  
13      WERE SITTING IN THE ROOM, THEY MIGHT WANT US TO CHOOSE FOR  
14      THEM.

15      Q.    SIR, I'D LIKE TO TALK TO YOU ABOUT THE IPHONE.

16             HOW DID APPLE COME TO DEVELOP THE IPHONE?

17      A.    WELL, A NUMBER OF YEARS AGO A BUNCH OF THINGS WERE  
18      HAPPENING IN PARALLEL THAT ALL CAME TOGETHER TO MAKE THE IPHONE  
19      COME TO BE.

20             ONE OF THE THINGS IS WE HAD GREAT SUCCESS WITH THE IPOD.  
21      IT WAS REALLY OUR FIRST BIG SUCCESS AFTER OUR COMPUTER, AFTER  
22      THE MAC, WE DID IPOD.

23             AND THIS GREAT LITTLE MUSIC PLAYER MEANT A LOT TO US, AND  
24      WE WONDERED WHAT COULD COME LATER ON AFTER IPOD?  WHAT OTHER  
25      DEVICE MIGHT YOU HAVE THAT COULD HOLD YOUR MUSIC AND YOUR

1 PHOTOS AND VIDEOS AND MEDIA TYPES YOU CARE ABOUT THAT YOU CARRY  
2 WITH YOU.

3 AND OUR VISION WAS PERHAPS SOME DAY IT WOULD BE THE PHONE,  
4 THAT COULD BECOME A DEVICE.

5 SO WE WANTED TO TRY TO INVENT THAT FEATURE RATHER THAN LET  
6 IT HAPPEN TO US.

7 SECONDLY, THERE WAS SOME OTHER TECHNOLOGY AND THINGS WE  
8 WERE WORKING ON, WE WERE ALREADY WORKING ON WHAT WOULD  
9 EVENTUALLY BECOME THE IPAD, AND WE WERE WORKING ON THAT AND WE  
10 HAD COME UP WITH TECHNOLOGY FOR MULTITOUCH USER INTERFACES, FOR  
11 USING YOUR HANDS ON THE SCREEN TO MANIPULATE OBJECTS.

12 AND WE REALIZED THAT THAT COULD BE A PRETTY BIG  
13 BREAKTHROUGH FOR A PHONE, AND WE COULD TAKE THAT TECHNOLOGY AND  
14 INSTEAD USE IT FIRST TO MAKE A PHONE.

15 AND I THINK THE THIRD THING THAT WAS HAPPENING AROUND THAT  
16 TIME WAS BECAUSE IPOD WAS A SUCCESS, WE WERE ALWAYS WONDERING  
17 WHAT ELSE COULD COME DOWN THE ROAD THAT WOULD CHANGE A WHOLE  
18 INDUSTRY LIKE THE IPOD DID?

19 WITH THE IPOD, WHAT CHANGED WAS WE MOVED FROM MECHANICAL  
20 DEVICES, DVD PLAYERS, CD PLAYERS, INTO DEVICES THAT WERE  
21 CONTROLLED BY SOFTWARE. AND WE ALWAYS THOUGHT WHAT ELSE COULD  
22 UNDERGO THAT KIND OF TRANSFORMATION WHERE APPLE COULD BE A  
23 LEADER AND MAKING THAT HAPPEN? AND WE REALIZED THAT COULD BE A  
24 PHONE, SOME DAY A PHONE, LIKE THE IPOD, COULD BE DRIVEN MOSTLY  
25 BY SOFTWARE, NOT JUST BY BUTTONS AND SWITCHES, AND THAT WAS OUR

1 VIEW OF HERE'S OUR OPPORTUNITY TO CHANGE THIS INDUSTRY AND  
2 CHANGE APPLE.

3 Q. HOW LONG WAS THE DEVELOPMENT PROCESS FOR THE IPHONE?

4 A. WELL, THERE'S NEVER ONE SIMPLE MOMENT IN TIME WHEN IT  
5 STARTS. A NUMBER OF THINGS ARE ALL BEGINNING AT DIFFERENT  
6 TIMES.

7 BUT ROUGHLY, YOU KNOW, TWO AND A HALF YEARS OR SO, EARLY  
8 IN 2004 TO 2005 TIMEFRAME PEOPLE WERE BEGINNING TO WORK ON IT.

9 Q. AND WHEN WAS THE IPHONE EVENTUALLY ANNOUNCED?

10 A. IN JANUARY OF 2007.

11 Q. AND WAS THE DEVELOPMENT CONTINUOUS FROM THE TIME FROM 2004  
12 TO 2007?

13 A. YES. IT -- IT BEGAN AND AS IT PICKED UP STEAM AND GREW,  
14 MORE AND MORE PEOPLE WERE ADDED TO THE PROJECT OVER TIME.

15 BUT IT WAS BEING DEVELOPED THAT ENTIRE TIME.

16 Q. APPROXIMATELY HOW MANY PEOPLE AT APPLE WERE INVOLVED IN  
17 THE IPHONE PROJECT?

18 A. WELL, IT CHANGES OVER TIME. AT THE BEGINNING IT WAS A  
19 SMALL TEAM THAT GREW QUICKLY TO HUNDREDS OF PEOPLE, AND REALLY  
20 IN THE END, IT BECAME THE WHOLE COMPANY. IT WAS OUR NUMBER ONE  
21 PRODUCT AND INVOLVES PRETTY MUCH EVERY ORGANIZATION AT APPLE.

22 Q. WAS THIS PROJECT CONFIDENTIAL AT APPLE?

23 A. VERY MUCH.

24 Q. AND WHAT WERE SOME OF THE OBJECTIVE EVIDENCE THAT IT WAS  
25 CONFIDENTIAL?

1           A.     WELL, WE TRY TO KEEP ALL OF OUR PROJECTS CONFIDENTIAL, BUT  
2           WE KNEW THIS WAS SO BIG AND IMPORTANT TO APPLE THAT EXTRA STEPS  
3           WERE TAKEN TO KEEP IT SECRET.

4                     NOT ONLY DID WE LIMIT THE NUMBER OF PEOPLE WHO WOULD KNOW  
5           WHAT WAS GOING ON, BUT THOSE PEOPLE NEEDED TO ACTUALLY SIGN A  
6           SPECIAL NONDISCLOSURE AGREEMENT SPECIFICALLY FOR THIS PROJECT  
7           TO SAY THIS IS EXTRA SECRET AND NEEDED, NEEDED THAT  
8           DOCUMENTATION.

9                     AND YOU WEREN'T ALLOWED TO TALK TO OTHER PEOPLE WHO AREN'T  
10          ALREADY APPROVED ON THE LIST OF PEOPLE WORKING ON IPHONE IN THE  
11          BEGINNING.

12                    AND PEOPLE WHO WORKED ON IT HAD SPECIAL MEETINGS IN  
13          SPECIAL LOCATIONS AND EXTRA SECURE ROOMS AND SO ON.   THERE WERE  
14          MANY ELEMENTS OF IT THAT WERE SECRET.

15          Q.     WERE YOU PERSONALLY INVOLVED IN THE DECISION TO START THE  
16          DEVELOPMENT PROJECT FOR THE IPHONE?

17          A.     YES.

18          Q.     DID APPLE CONSIDER THAT A, A RISKY INVESTMENT AT THE TIME?

19          A.     INCREDIBLY RISKY.   WE HAD A TERM WE CALLED "YOU BET YOUR  
20          COMPANY."

21          Q.     AND WHAT WAS IT ABOUT THAT PARTICULAR INVESTMENT THAT YOU  
22          SAW AS RISKY?

23          A.     THERE ARE A NUMBER OF WAYS THAT WE THOUGHT ABOUT WHAT A  
24          HUGE RISK THIS WAS FOR APPLE.

25                    FIRST, APPLE HAD REALLY ONLY HAD TWO PRODUCTS AT THE TIME,

1 THE MAC AND THE IPOD.

2 AND TO TAKE ON A WHOLE NEW PROJECT OF THIS NATURE IS, IS  
3 RARE FOR APPLE. WE LIKE TO THROW OURSELVES FULLY INTO A  
4 PRODUCT AND HAVE ALL OF OUR BEST PEOPLE WORK ON SOMETHING. SO  
5 WE DON'T WANT TO DILUTE OURSELVES ACROSS TOO MANY THINGS.

6 THIS WAS AN AREA WE WERE GETTING INTO WITH NO PAST  
7 EXPERIENCE. HAVING NOT MADE A PHONE, WE DIDN'T KNOW ABOUT  
8 RADIOS AND ANTENNAS AND ALL THE THINGS THAT GO INTO MAKING A  
9 PHONE.

10 AND WE DIDN'T WANT TO HURT OUR REPUTATION AS A COMPANY  
11 THAT WAS GROWING AGAIN, STARTING TO BECOME SUCCESSFUL AGAIN,  
12 AND TURNING OURSELVES AROUND AND RISK ALL THAT TO DO SOMETHING  
13 WE'VE NEVER DONE BEFORE.

14 Q. WERE YOU PERSONALLY INVOLVED IN THE IPHONE DEVELOPMENT  
15 PROJECT?

16 A. YES.

17 Q. WHAT ROLE DID YOU PLAY?

18 A. BOTH AS A MEMBER OF THE EXECUTIVE TEAM WHERE WE ALL TALKED  
19 ABOUT IT AND WERE INVOLVED IN IT, AND ALSO AS THE HEAD OF THE  
20 PRODUCT MARKETING TEAM, MY TEAM WAS RESPONSIBLE FOR WORKING ON  
21 ALL THE PRODUCTS, WORKING DIRECTLY HAND IN HAND WITH THE  
22 ENGINEERS ON THE CHOICES AND DECISIONS ON WHAT WE'RE GOING TO  
23 DO AND WHAT WE'RE GOING TO MAKE.

24 Q. WHEN WAS THE IPHONE FIRST PUBLICLY ANNOUNCED?

25 A. WE ANNOUNCED IT IN JANUARY AT MACWORLD 2007.

1 Q. AND WHERE WAS THAT?

2 A. IN SAN FRANCISCO.

3 Q. WERE YOU PERSONALLY INVOLVED IN PLANNING THAT  
4 ANNOUNCEMENT?

5 A. YES, I WAS.

6 Q. DID YOU PERSONALLY PARTICIPATE IN THE ANNOUNCEMENT ITSELF?

7 A. OH, YEAH, IN MANY WAYS.

8 I, AND MY TEAM, WERE RESPONSIBLE FOR WORKING ON THE WHOLE  
9 PRESENTATION, THE KEYNOTE, THE DEMOS.

10 AND THEN ALSO I TOOK -- HAD A PERSONAL ROLE IN THE DEMO OF  
11 THE VERY FIRST PHONE CALL ON THE IPHONE.

12 Q. OUR JURY HAS ONLY SEEN PART OF THE VIDEO, AND I DON'T  
13 THINK -- FRANKLY, UNFORTUNATELY YOU WERE ON THE CUTTING ROOM  
14 FLOOR. SO CAN YOU TELL US ABOUT WHAT YOUR ROLE WAS AT THE  
15 ANNOUNCEMENT?

16 A. IT WAS MY FAVORITE PART.

17 SO WHEN WE WERE PRESENTING THE IPHONE, ONE OF THE THINGS  
18 WE WANTED TO SHOW PEOPLE WAS THAT IT WAS A BREAKTHROUGH  
19 TELEPHONE AND THE EXPERIENCE OF MAKING A CALL ON IT WAS  
20 SOMETHING REALLY GREAT AND FUN.

21 SO MR. JOBS WAS DOING THE KEYNOTE AND HE FIRST MADE A  
22 PHONE CALL TO SIR JONATHAN IVES, THE HEAD OF OUR DESIGN TEAM,  
23 WHO WAS IN THE AUDIENCE, AND STEVE SHOWED HOW TO MAKE A PHONE  
24 CALL, AND WHILE HE WAS ON THAT CALL TO JONATHAN, I MADE A CALL  
25 TO STEVE ALSO FROM THE AUDIENCE.



1 SO YOU SAW A SECOND CALL COME IN, AND THEN STEVE WAS ABLE  
2 TO SHOW HOW YOU SWITCH BETWEEN TWO CALLS TO JOIN THEM TOGETHER  
3 AND MERGE THEM TOGETHER IN ONE CONFERENCE CALL. AND THIS WAS  
4 ALL DONE WITH A WHOLE NEW EXPERIENCE. SO I GOT TO BE SOMETHING  
5 I'M VERY PROUD OF, PART OF THE VERY FIRST PHONE CALL MADE ON  
6 THE IPHONE PUBLICLY.

7 Q. WAS THERE AN OVERALL THEME OF THIS KEYNOTE ANNOUNCEMENT?

8 A. YES. FIRST, THE KEYNOTE WAS KICKED OFF WITH STEVE TELLING  
9 EVERYONE WE'RE GOING TO MAKE HISTORY TODAY. WE ALL KNEW WHAT A  
10 BIG MOMENT THIS WAS.

11 AND HE STARTED TO TALK ABOUT IPHONE, FIRST TALKING ABOUT  
12 WE'RE GOING TO INTRODUCE THREE NEW PRODUCTS TODAY RATHER THAN  
13 JUST ONE, AND THOSE THREE PRODUCTS WERE A REVOLUTIONARY NEW  
14 PHONE, AN INTERNET COMMUNICATION DEVICE, AND THE BEST IPOD WE  
15 EVER MADE, THOSE THREE THINGS.

16 AND, OF COURSE, THOSE THREE THINGS WERE ULTIMATELY REALLY  
17 ONE THING THAT DID ALL OF THAT.

18 Q. CAN YOU DESCRIBE WHAT THE ATMOSPHERE WAS AT THIS  
19 ANNOUNCEMENT?

20 A. I THINK THE WORD I ALWAYS THINK OF IS ELECTRIC. THAT WAS  
21 THE ENERGY AND FEELING IN THE ROOM.

22 Q. WAS THERE A VIDEO THAT WAS MADE OF THE ANNOUNCEMENT?

23 A. YES.

24 Q. SIR, YOU HAVE A WHITE BINDER IN FRONT OF YOU THAT CONTAINS  
25 EXHIBITS. WOULD YOU OPEN IT UP, PLEASE, TO EXHIBIT,

1 PLAINTIFF'S EXHIBIT 118.

2 A. OKAY.

3 Q. CAN YOU TELL ME WHAT THAT IS, PLEASE?

4 A. THIS IS A DVD WITH A VIDEO FROM THAT ANNOUNCEMENT.

5 MR. MCELHINNY: YOUR HONOR, I MOVE THE ADMISSION OF  
6 PLAINTIFF'S EXHIBIT 118.

7 MR. PRICE: NO FURTHER OBJECTION.

8 THE COURT: ALL RIGHT. IT'S ADMITTED.

9 (PLAINTIFF'S EXHIBIT 118 WAS ADMITTED IN EVIDENCE.)

10 THE COURT: GO AHEAD, PLEASE.

11 BY MR. MCELHINNY:

12 Q. SIR, WAS THERE A PUBLIC REACTION TO THE ANNOUNCEMENT? DID  
13 THE PRESS ATTEND? I SHOULD ASK THAT QUESTION, DID THE PRESS  
14 ATTEND THE ANNOUNCEMENT?

15 A. OH, YES, THERE WERE MANY PRESS IN ATTENDANCE AT THE EVENT,  
16 AND THE REACTION WAS ENORMOUS. IT WAS COVERED BY EVERYONE I  
17 CAN IMAGINE IN PRESS AND ONLINE.

18 Q. WAS THE INITIAL REACTION TO THE ANNOUNCEMENT, WAS IT ALL  
19 POSITIVE?

20 A. OH, NOT AT ALL. IT WAS VERY MIXED. THERE WERE FEELINGS  
21 THAT THIS WAS ONE OF THE MOST AMAZING BREAKTHROUGHS EVER, AND  
22 THERE WERE FEELINGS FROM SOME WHO THOUGHT IT WAS THE BIGGEST  
23 MISTAKE AND WE WERE GOING TO FALL FLAT ON OUR FACE.

24 Q. CAN YOU GIVE US SOME EXAMPLES OF PEOPLE WHO PREDICTED  
25 FAILURE OF THE IPHONE?

1 A. NOT SURPRISINGLY MOST OF OUR COMPETITORS DID,  
2 MR. BOTTOMER, THEN CEO OF MICROSOFT SAID SOME PRETTY MEAN  
3 THINGS ABOUT HOW WE WERE GOING TO FAIL WITH IT.

4 WE HEARD COMMENTS FROM NOKIA, FROM A SMARTPHONE MAKER AT  
5 THE TIME, PALM, SAID THAT WE CAN'T JUST COME UP AND MAKE A  
6 PHONE THE VERY FIRST TIME OUT AND SO ON.

7 THERE WERE NO END TO THE LIST OF PEOPLE WHO SAID THIS  
8 WOULD FAIL.

9 Q. WOULD YOU LOOK IN YOUR BINDER, PLEASE, TO PLAINTIFF'S  
10 EXHIBIT 135A.

11 A. OKAY.

12 Q. CAN YOU TELL ME WHAT THAT IS, PLEASE?

13 A. THIS IS AN ARTICLE FROM THE "NEW YORK TIMES" DATED  
14 JANUARY 11TH, 2007.

15 Q. AND IS THIS PUBLIC REACTION TO THE ANNOUNCEMENT ITSELF?

16 A. YES. THIS IS A NEWS STORY ABOUT THE LAUNCH AT THAT TIME  
17 WRITTEN BY MR. DAVID POGUE, AND IT DESCRIBES HIS THOUGHTS OF  
18 THAT.

19 Q. JUST A MINUTE.

20 YOUR HONOR, I MOVE THE ADMISSION OF PLAINTIFF'S EXHIBIT  
21 135A.

22 MR. PRICE: NO FURTHER OBJECTION, AND WE REQUEST A  
23 LIMITING INSTRUCTION AS TO THIS NOT BEING ENTERED FOR THE TRUTH  
24 OF THE MATTER.

25 THE COURT: THIS IS NOT ADMITTED FOR THE TRUTH OF THE

1 MATTER, BUT IT IS ADMITTED.

2 (PLAINTIFF'S EXHIBIT 135A WAS ADMITTED IN EVIDENCE.)

3 THE COURT: GO AHEAD, PLEASE.

4 MR. MCELHINNY: THANK YOU.

5 Q. SIR, WE'VE PUT ON THE -- WE'VE PUT THE ARTICLE ON THE  
6 SCREEN AND WE'VE ALSO PUT ON A DEMONSTRATIVE. CAN YOU USE THIS  
7 DEMONSTRATIVE -- WE DON'T HAVE THE TIME TO READ ALL OF THESE  
8 ARTICLES. THE JURY WILL HAVE THEM. CAN YOU USE THIS  
9 DEMONSTRATIVE TO EXPLAIN SOME OF THE SALIENT POINTS, OR THE  
10 SALIENT POINT.

11 A. YES I CAN.

12 AS YOU SEE, IT'S FROM THE "NEW YORK TIMES," THE TITLE OF  
13 THE ARTICLE WAS "APPLE WAVES ITS WAND AT THE PHONE."

14 YOU SEE A PICTURE OF THE IPHONE BEING HELD IN A HAND, AND  
15 ONE OF THE QUOTES FROM THE ARTICLE IS "THIS MACHINE IS SO  
16 PACKED WITH POSSIBILITIES THAT THE CELL PHONE MAY ACTUALLY BE  
17 THE LEAST INTERESTING PART."

18 Q. SIR, DID THE PRESS COVERAGE CONTINUE AFTER THE FIRST WEEK  
19 FOLLOWING MACWORLD ANNOUNCEMENT?

20 A. YES, IT DID.

21 Q. SO THE PHONE WAS ANNOUNCED IN JANUARY. WHEN WAS IT FIRST  
22 RELEASED FOR SALE?

23 A. THAT SUMMER, IN JUNE OF 2007.

24 Q. WHAT ACCOUNTED FOR THE SIX MONTHS IN BETWEEN?

25 A. WELL, THAT'S, FIRST, THE AMOUNT OF TIME IT TOOK US TO

1 COMPLETE THE PRODUCT AND START TO BUILD THEM AND GET THEM READY  
2 FOR SALE.

3 Q. DID APPLE DO ANYTHING IN THAT SIX MONTHS BETWEEN THE  
4 JANUARY ANNOUNCEMENT AND THE JUNE RELEASE TO PROMOTE THE  
5 IPHONE?

6 A. YES, WE DID.

7 Q. AND WHAT DID YOU DO, SIR?

8 A. WELL, FIRST, IN THE BEGINNING WE DID NOTHING FOR MANY  
9 WEEKS. WE ACTUALLY HAD A STRATEGY OF GOING SILENT.

10 AND THIS WAS BECAUSE THE PRESS COVERAGE WAS SO ENORMOUS  
11 AND SO POSITIVE ABOUT THE EXCITEMENT AROUND THE PRODUCT THAT WE  
12 THOUGHT TO JUST LET THAT GO OUT THERE. THERE WAS NOT A LOT TO  
13 ADD TO THE EXCITEMENT.

14 AND THEN TO PREPARE CUSTOMERS FOR THE ARRIVAL OF IPHONE  
15 FOR SALE AS WE GOT CLOSER TO JUNE, WE DID END UP WITH SOME TV  
16 ADVERTISEMENTS. FIRST WE DID A TEASER AD AS WE CALL IT ON THE  
17 ACADEMY AWARDS. IT WAS JUST CALLED HELLO, AND IT SHOWED PEOPLE  
18 ANSWERING THE PHONE.

19 AND THEN AS WE GOT CLOSER TO THE LAUNCH OF THE IPHONE, WE  
20 STARTED TO CREATE ACTUAL TV ADS ABOUT THE IPHONE.

21 Q. SIR, WOULD YOU LOOK IN YOUR BINDER, PLEASE, AT PLAINTIFF'S  
22 EXHIBIT 180.

23 A. YES.

24 Q. WHAT IS THAT, SIR?

25 A. THIS IS A DVD ABOUT THE FIRST ADS WE CREATED TO LAUNCH THE

1 IPHONE.

2 MR. MCELHINNY: YOUR HONOR, I MOVE PDX 180, PLEASE.

3 MR. PRICE: NO FURTHER OBJECTIONS. AND AGAIN,  
4 LIMITING PURPOSE.

5 THE COURT: ALL RIGHT. IT'S ADMITTED AND IT IS --  
6 YOU ARE NOT TO CONSIDER IT FOR ITS TRUTH.

7 (PLAINTIFF'S EXHIBIT 180 WAS ADMITTED IN EVIDENCE.)

8 THE COURT: GO AHEAD, PLEASE.

9 BY MR. MCELHINNY:

10 Q. MR. SCHILLER, I'D LIKE TO SHOW IT FOR THIS AD, PLEASE.

11 (A VIDEOTAPE WAS PLAYED IN OPEN COURT OFF THE RECORD.)

12 MR. MCELHINNY: NOW CAN WE SEE THEM TOGETHER?

13 (LAUGHTER.)

14 (A VIDEOTAPE WAS PLAYED IN OPEN COURT OFF THE RECORD.)

15 BY MR. MCELHINNY:

16 Q. SIR, THAT WAS THE FIRST AD THAT YOU DID; IS THAT CORRECT?

17 A. YES.

18 Q. DO YOU RECALL WHAT THE TITLE OF THAT AD WAS?

19 A. HOW TO.

20 Q. HOW TO. WAS THERE ANY SIGNIFICANCE TO THE FACT THAT IT  
21 STARTED WITH THE SLIDE TO UNLOCK FEATURE?

22 A. ABSOLUTELY.

23 Q. WAS THAT INTENTIONAL?

24 A. YES, IT WAS.

25 Q. CAN YOU EXPLAIN THE LOGIC BEHIND THAT CHOICE, PLEASE?

1 A. WHEN THIS AD RAN, PEOPLE HADN'T HAD THE OPPORTUNITY YET TO  
2 ACTUALLY USE AN IPHONE FOR THEMSELVES, AND SO THEY'VE NEVER  
3 USED AT THIS POINT IN TIME A DEVICE ANYTHING LIKE IT.

4 THE CHALLENGE IS HOW DO YOU SHOW PEOPLE, IN A SIMPLE,  
5 30-SECOND AD, SOMETHING THAT GIVES THEM A FEEL FOR WHAT IT'S  
6 LIKE TO USE THIS NEW GENERATION OF APPLE'S SMARTPHONE.

7 AND WE STARTED THE AD WITH SOMETHING YOU'RE GOING TO BE  
8 DOING EVERY DAY, MANY, MANY TIMES A DAY, WHICH IS TO UNLOCK THE  
9 SCREEN, AND TO DO THAT, YOU USE A SIMPLE GESTURE, SLIDE TO  
10 UNLOCK.

11 AND THAT ONE GESTURE, HAVING SEEN THAT ONE THING FIRST,  
12 YOU GET AN INSTANT IDEA OF HOW MULTITOUCH WORKS SO THAT YOU'RE  
13 DOING A GESTURE ON THE SCREEN, AND IT DOES SOMETHING SIMPLE AND  
14 USEFUL TO YOU, AND THAT IT'S EASY TO USE. YOU DON'T NEED A  
15 MANUAL TO FIGURE IT OUT.

16 AND THAT ONE STARTING POINT WAS A GREAT BEGINNING TO YOUR  
17 UNDERSTANDING OF WHAT AN IPHONE IS AND WHAT THIS KIND OF DEVICE  
18 CAN DO.

19 Q. HAD YOU IDENTIFIED UNIQUE RISKS IN TRYING TO BRING A  
20 MULTITOUCH PRODUCT TO MARKET IN 2007?

21 A. OH, YES, WE DID.

22 Q. AND WHAT WERE THE RISKS THAT WERE SPECIFIC TO THAT KIND OF  
23 A PRODUCT?

24 A. WELL, UNTIL THE IPHONE, THE MAJORITY OF PHONES OUT THERE  
25 EITHER HAD A NUMERIC KEY PAD, FEATURES PHONES WOULD HAVE A TEN

1 DIGIT KEYPAD, OR HAD A PHYSICAL KEYBOARD ON IT FOR NOT ONLY  
2 DIALLING, BUT TYPING ON IT AS WELL, AND PEOPLE WERE VERY  
3 FAMILIAR WITH THAT AND COMFORTABLE WITH THAT.

4 THE IDEA THAT YOU WOULD NOW GO TO A FULL GLASS SCREEN THAT  
5 YOU WOULD TOUCH WITH YOUR FINGERS AND CONTROL TO TYPE AND MAKE  
6 GESTURES WAS, WAS PRETTY UNUSUAL AND RISKY AND MANY PEOPLE  
7 CALLED THAT OUT AS PERHAPS THE GREATEST RISK TO IPHONE IS HOW  
8 YOU WOULD HAVE AN EASY TO USE, POWERFUL EXPERIENCE ON THIS  
9 MULTITOUCH DISPLAY.

10 Q. OBVIOUSLY IN RETROSPECT THE PRODUCT HAS BEEN SUCCESSFUL.  
11 WOULD YOU AGREE WITH ME ABOUT THAT?

12 A. YES.

13 Q. AND HOW DID YOU OVERCOME THESE RISKS AND CHALLENGES? WHAT  
14 IS IT ABOUT THAT, THE PRODUCT, THAT YOU THINK NOW IN RETROSPECT  
15 MADE IT SUCCESSFUL?

16 A. WELL, A LOT WENT INTO MAKING IT SUCCESSFUL.

17 MR. PRICE: OBJECTION. CALLS FOR IMPROPER OPINION  
18 TESTIMONY.

19 THE COURT: OVERRULED.

20 GO AHEAD, PLEASE. YOU MAY ANSWER.

21 THE WITNESS: A LOT OF THINGS WENT INTO MAKING THE  
22 IPHONE SUCCESSFUL.

23 TO ME, I THINK IT'S THIS INCREDIBLE, BEAUTIFUL DESIGN.  
24 PEOPLE LOVED HOW IT LOOKS.

25 THAT IT DOES THINGS THAT YOU'VE NEVER BEEN ABLE TO DO



1 BEFORE AT THE TIME WITH PHONES, ALL THIS INTERNET CAPABILITIES  
2 AND ITS IPOD USEFULNESS.

3 BUT MOST OF ALL, THAT THIS PIECE OF GLASS THAT COMES ALIVE  
4 WITH SOFTWARE IS, IS EASY TO USE, IS FUN TO USE, AND DOES ALL  
5 THESE NEW ACTIONS FOR YOU WITHOUT HAVING TO BE TRAINED OR  
6 TAUGHT. IT'S INTUITIVE AND EASY TO USE AND POWERFUL AND FUN.

7 AND MAKING THAT WHOLE EXPERIENCE, IT JUST ADDS UP TO AN  
8 EXPERIENCE THAT'S UNIQUE AND USEFUL TO PEOPLE.

9 ULTIMATELY, I THINK THAT DROVE ITS SUCCESS.

10 BY MR. MCELHINNY:

11 Q. WHERE WERE YOU PERSONALLY ON THE DAY THAT THE IPHONE FIRST  
12 WENT ON SALE?

13 A. WHEN IT FIRST WENT ON SALE, I AND MY TEAM KNEW IT WAS A  
14 BIG DAY. SO WE FANNED TO DIFFERENT SELLING LOCATIONS, AND I  
15 CHOSE TO GO TO CHICAGO. WE HAVE AN APPLE RETAIL STORE ON  
16 MICHIGAN AVENUE, AND I WENT THERE AND BROUGHT MY SON WITH ME  
17 BECAUSE I KNEW IT WOULD BE A BIG DAY FOR BOTH OF US, AND WE  
18 WERE THERE TO BE PART OF THE EXCITEMENT OF THE FIRST SALES OF  
19 IPHONE.

20 Q. AND WHY DID YOU HAVE SOMEBODY FROM THE ORGANIZATION GO TO  
21 EACH OF THE MAJOR SALES LOCATIONS?

22 A. BECAUSE FOR US THIS WAS A HISTORIC DAY. THE CROWDS, THE  
23 ENERGY, THE NEWNESS OF A DEVICE LIKE IPHONE COMING INTO THE  
24 MARKET WAS GOING TO BE FELT AROUND THE COUNTRY, AND WE WANTED  
25 TO BE EVERYWHERE WE COULD AND SEE AND FEEL THAT AS WELL.

1 Q. AFTER THE IPHONE WAS RELEASED, DID YOU SEE ANY REVIEWS OF  
2 PEOPLE WHO HAD ACTUALLY -- BY REPORTERS OR PROFESSIONALS WHO  
3 HAD ACTUALLY USED THE PHONE AND WERE REVIEWING IT?

4 A. YES.

5 Q. IF YOU OPEN YOUR BINDER, PLEASE, TO EXHIBIT PDX 144A AS IN  
6 ALBERT.

7 A. OKAY.

8 Q. CAN YOU TELL US WHAT THAT IS, PLEASE?

9 A. THIS IS A SUMMARY OF SOME OF THE NEWS COVERAGE ABOUT  
10 IPHONE.

11 Q. AND BE MORE SPECIFIC. WHAT DO YOU MEAN BY A SUMMARY? HOW  
12 MANY PAGES IS IT?

13 A. IT IS SIX PAGES LONG.

14 Q. AND DOES IT HAVE EXCERPTS OF VARIOUS ARTICLES? IS THAT  
15 RIGHT?

16 A. IT DOES.

17 MR. MCELHINNY: YOUR HONOR, WE MOVE PDX 144A.

18 MR. PRICE: NO FURTHER OBJECTION, AGAIN, WITH A  
19 FURTHER LIMITING INSTRUCTION THAT IT'S NOT TO BE USED FOR THE  
20 TRUTH OF WHAT'S SAID.

21 THE COURT: THIS IS ADMITTED, BUT IT'S NOT TO BE  
22 CONSIDERED FOR THE TRUTH OF WHAT IS SAID.

23 (PLAINTIFF'S EXHIBIT 144A WAS ADMITTED IN EVIDENCE.)

24 BY MR. MCELHINNY:

25 Q. JUST SO THE JURY WILL RECOGNIZE IT, CAN WE DO WHAT WE'VE

1 DONE, PUT THE FIRST PAGE UP.

2 CAN YOU JUST EXPLAIN TO US WHAT THIS SUMMARY IS.

3 A. YES. YOU CAN SEE LISTED ON, FOR EXAMPLE, THE FIRST PAGE  
4 FOUR DIFFERENT EXAMPLES OF SEPARATE NEWS COVERAGE, EACH ONE  
5 ABOUT THE IPHONE. THERE'S ONE FROM THE SAN FRANCISCO  
6 CHRONICLE, ANOTHER FROM THE "NEW YORK TIMES," ANOTHER FROM  
7 "U.S.A. TODAY," AND A FOURTH ONE FROM THE "NEW YORK TIMES"  
8 AGAIN ON THIS ONE PAGE.

9 Q. CAN YOU LOOK IN YOUR BINDER, PLEASE, AND SEE PLAINTIFF'S  
10 EXHIBIT 113A?

11 A. YES.

12 Q. CAN YOU TELL ME WHAT 113A IS, PLEASE.

13 A. THIS IS A REVIEW OF THE IPHONE THAT APPEARED IN THE  
14 "WALL STREET JOURNAL" DATED JUNE 27TH, 2007.

15 MR. MCELHINNY: YOUR HONOR, I MOVE THE ADMISSION OF  
16 113A.

17 MR. PRICE: AND, AGAIN, NO FURTHER OBJECTIONS, YOUR  
18 HONOR, AND WITH A LIMITING INSTRUCTION NOT TO BE CONSIDERED FOR  
19 THE TRUTH.

20 THE COURT: OKAY. IT'S NOT TO BE CONSIDERED FOR THE  
21 TRUTH OF WHAT IS STATED.

22 BUT IT'S ADMITTED.

23 (PLAINTIFF'S EXHIBIT 113A WAS ADMITTED IN EVIDENCE.)

24 THE COURT: GO AHEAD, PLEASE.

25 MR. MCELHINNY: THANK YOU.

1 Q. MR. SCHILLER, I'M SHOWING YOU FIRST 113A AND THEN I'M  
2 GOING TO SHOW YOU A DEMONSTRATIVE, PDX 2, WHICH WE'VE CREATED.  
3 CAN YOU USE THE DEMONSTRATIVE, PLEASE, AND USE IT TO GIVE US  
4 THE SALIENT POINTS THE ARTICLE.

5 FIRST, WHO IS WALTER MOSSBERG.

6 A. THIS ARTICLE WAS WRITTEN BY WALTER MOSSBERG AND KATHERINE  
7 BOEHRET. AND MR. MOSSBERG HAS BEEN A LONG-TIME PRODUCT  
8 REVIEWER IN THE "WALL STREET JOURNAL" AND IS ONE OF THE BEST  
9 KNOWN TECHNOLOGY COLUMNISTS IN OUR COUNTRY.

10 Q. CAN YOU USE THE DEMONSTRATIVE, PLEASE, TO ILLUMINATE THE  
11 ARTICLE FOR THE JURY, PLEASE.

12 A. YES. THE TITLE OF THE ARTICLE IS "TESTING OUT THE  
13 IPHONE."

14 YOU SEE AN IMAGE THERE OF FIVE IPHONES SHOWING DIFFERENT  
15 USES ON THE SCREEN. YOU ALSO SEE A TABLE HERE ON THE BOTTOM  
16 RIGHT THAT APPEARED IN THE ARTICLE THAT SHOWED THE IPHONE  
17 AGAINST AND COMPARED TO COMMON COMPETITIVE PRODUCTS AT THE  
18 TIME. AND THERE ARE TWO QUOTES CALLED OUT IN THIS  
19 DEMONSTRATIVE.

20 THE FIRST IS "THE IPHONE IS, ON BALANCE, A BEAUTIFUL AND  
21 BREAKTHROUGH HANDHELD COMPUTER. ITS SOFTWARE, ESPECIALLY, SETS  
22 A NEW BAR FOR THE SMARTPHONE INDUSTRY."

23 AND THE SECOND QUOTE IS "THE IPHONE IS A WHOLE NEW  
24 EXPERIENCE AND A PLEASURE TO USE."

25 Q. SIR, IF YOU LOOK AT THE FOUR PHONES, DO YOU SEE THAT'S THE

1 SAMSUNG BLACKJACK?

2 A. YES, I DO.

3 Q. IS THAT WHAT THE BLACKJACK LOOKED LIKE IN 2007?

4 A. YES, IT DID.

5 Q. THANK YOU. SIR, IF YOU WOULD PLEASE TURN TO EXHIBIT 127A  
6 IN YOUR BINDER, CAN YOU TELL US WHAT THAT IS?

7 A. THIS IS ANOTHER PRODUCT REVIEW, THIS ONE FROM THE  
8 "NEW YORK TIMES," ALSO DATED JUNE 27TH, 2007.

9 MR. MCELHINNY: YOUR HONOR, I MOVE 127A.

10 MR. PRICE: AGAIN, NO FURTHER OBJECTIONS AND NOT TO  
11 BE OFFERED FOR THE TRUTH OF THE MATTERS ASSERTED.

12 THE COURT: ALL RIGHT. IT IS ADMITTED, AND IT'S NOT  
13 TO BE CONSIDERED FOR THE TRUTH OF THE MATTER STATED IN THE  
14 ARTICLE.

15 (PLAINTIFF'S EXHIBIT 127A WAS ADMITTED IN EVIDENCE.)

16 THE COURT: GO AHEAD, PLEASE.

17 BY MR. MCELHINNY:

18 Q. SIR, WE'VE PUT THE ARTICLE ON THE BOARD, BUT NOW WE'RE  
19 GOING TO PUT ON DEMONSTRATIVE PDX 3, AND CAN YOU USE THIS TO  
20 SUMMARIZE THE ARTICLE FOR?

21 A. YES. THIS ARTICLE WAS TITLED "THE IPHONE MATCHES MOST OF  
22 ITS HYPE," WRITTEN BY DAVID POGUE, JUNE 27TH, 2007.

23 TWO OF THE QUOTES IN THE ARTICLE ARE "UNLESS YOU'VE BEEN  
24 IN A SENSORY-DEPRIVATION TANK FOR SIX MONTHS, YOU KNOW WHAT THE  
25 IPHONE IS: A TINY, GORGEOUS HAND-HELD COMPUTER WHOSE SCREEN IS

1 A SLAB OF TOUCH-SENSITIVE GLASS.

2 "AND THE BIGGER ACHIEVEMENT IS THE SOFTWARE. IT'S FAST,  
3 BEAUTIFUL, MENU-FREE, AND DEAD SIMPLE TO OPERATE."

4 Q. SIR, WOULD YOU PLEASE LOOK IN YOUR BINDER AT EXHIBIT  
5 PX 133. CAN YOU TELL US WHAT THAT EXHIBIT IS, PLEASE.

6 A. YES. THIS IS A SPECIAL ARTICLE IN "TIME MAGAZINE" THAT  
7 APPEARED IN 2007.

8 MR. MCELHINNY: YOUR HONOR, I MOVE EXHIBIT PX 133.

9 MR. PRICE: NO FURTHER OBJECTIONS AND NOT FOR THE  
10 TRUTH OF THE MATTER ASSERTED.

11 THE COURT: ALL RIGHT. IT IS ADMITTED AND NOT TO BE  
12 CONSIDERED FOR THE TRUTH OF WHAT'S STATED IN THE ARTICLE.

13 (PLAINTIFF'S EXHIBIT 133 WAS ADMITTED IN EVIDENCE.)

14 THE COURT: GO AHEAD, PLEASE.

15 BY MR. MCELHINNY:

16 Q. SIR, LET ME PUT A DEMONSTRATIVES UP, PDX 4, AND CAN YOU  
17 USE THAT TO HELP US UNDERSTAND SO WE'VE GOT A SUMMARY OF WHAT  
18 WAS IN THE ARTICLE.

19 A. YES. THIS STORY IN "TIME MAGAZINE" WAS AN ANNUAL STORY  
20 ABOUT THE BEST INVENTIONS OF 2007, AND IN THIS STORY, THEY  
21 AWARDED IPHONE THE INVENTION OF THE YEAR FOR 2007.

22 AND AS YOU SEE IN THE DEMONSTRATIVE THERE IS -- THE COVER  
23 OF "TIME MAGAZINE," THIS IS PRETTY AMAZING THAT IN NOVEMBER OF  
24 2007, THEY PLACED IPHONE ON THE COVER. YOU DON'T USUALLY SEE  
25 PRODUCTS ON THE COVER OF "TIME MAGAZINE."

1           THEY ALSO HAD FUN WITH THE ICONS ON THE HOME SCREEN ON THE  
2           ARTICLE AND SPELLED OUT THE TITLE OF THE ARTICLE, "BEST  
3           INVENTIONS OF 2007."

4           AND THERE ARE THREE QUOTES HERE DIRECTLY FROM THAT  
5           ARTICLE. THE FIRST IS "TOUCHY FEELY."

6           THE SECOND, "APPLE'S ENGINEERS USED A TOUCHSCREEN INNOVATE  
7           PAST THE GRAPHICAL USER INTERFACE (WHICH APPLE HELPED PIONEER  
8           WITH THE MACINTOSH IN THE 1980S) TO CREATE A WHOLE NEW KIND OF  
9           INTERFACE."

10          AND "THIS IS, AS ENGINEERS SAY, NONTRIVIAL."

11          Q.    SIR, WOULD YOU LOOK PLEASE AT PX 134?

12          A.    YES.

13          Q.    WHAT IS EXHIBIT 134?

14          A.    IT IS A STORY FROM THE TECHNOLOGY SECTION OF THE  
15          "NEW YORK TIMES" THAT APPEARED IN NOVEMBER OF 2011.

16          Q.    DID YOU SAY 2011?

17          A.    YES.

18          Q.    OKAY.

19          YOUR HONOR, I MOVE PX 134.

20          MR. PRICE: NO FURTHER OBJECTIONS AND AGAIN NOT FOR  
21          THE TRUTH OF THE MATTER ASSERTED.

22          THE COURT: ALL RIGHT. IT'S ADMITTED AND IT'S NOT TO  
23          BE CONSIDERED FOR THE TRUTH OF WHAT'S STATED.

24          (PLAINTIFF'S EXHIBIT 134 WAS ADMITTED IN EVIDENCE.)

25          BY MR. MCELHINNY:

1 Q. SIR, HERE'S THE ARTICLE, 134, AND WE'VE GOT A  
2 DEMONSTRATIVES, PDX 5. AND CAN YOU USE THE DEMONSTRATIVES TO  
3 HELP SUMMARIZE THE ARTICLE FOR US, PLEASE.

4 A. YES. THIS IS AN ARTICLE THAT, FOR ME, IS SOMETHING PRETTY  
5 SPECIAL. IT WAS TITLED "PATENT OFFICE HIGHLIGHTS JOBS'S  
6 INNOVATIONS" AND THE U.S. PATENT AND TRADEMARK OFFICE CREATED  
7 AN EXHIBIT ABOUT STEVE JOBS'S PATENTS AND INVENTIONS, AND IN  
8 DOING THAT, THEY SET UP DISPLAYS WITH, WITH PATENTS ON THEM,  
9 ABOUT A DOZEN ON EACH ONE, AND THEY DESIGNED THEM TO LOOK JUST  
10 LIKE THE PHONE.

11 SO YOU'D WALK INTO THIS EXHIBIT, YOU'D SEE AN IMAGE OF  
12 STEVE AND YOU'D SEE MANY, MANY, MANY OF HIS PATENTS ALL THERE,  
13 AND THAT'S WHAT THAT PHOTO REPRESENTS.

14 AND TWO OF THE PARAGRAPHS FROM THAT ARTICLE READ "THE  
15 UNITED STATES PATENT AND TRADEMARK OFFICE IN ALEXANDRIA,  
16 VIRGINIA RECENTLY UNVEILED AN EXHIBIT OF 30 GIANT IPHONE-LIKE  
17 MODELS HONORING THE INVENTIONS OF THE LATE STEVE JOBS.

18 ALTOGETHER ABOUT 300 PATENTS ARE AN DISPLAY, GIVING EXHIBIT  
19 ATTENDEES A VISUAL TOUR THROUGH APPLE'S HISTORY OF DESIGN AND  
20 INNOVATION.

21 "PATENTS ON TECHNOLOGICAL DEVICES DO NOT ALWAYS RESULT IN  
22 REAL PRODUCTS THAT HIT THE CONSUMER MARKET, BUT THEY DOCUMENT  
23 AN INVENTOR'S RESEARCH AND METHODOLOGY IN DIFFERENT AREAS OF  
24 DESIGN AND ENGINEERS. OFTEN, MULTIPLE PATENTED TECHNOLOGIES  
25 COME TOGETHER TO FORM ONE REAL PRODUCT, LIKE THE IPAD."



1 Q. SIR, WHAT'S THE SIGNIFICANCE OF THIS SECOND QUOTE?

2 A. WELL, THE SECOND QUOTE TALKS ABOUT --

3 MR. PRICE: YOUR HONOR, I'M GOING TO OBJECT TO LACK  
4 OF FOUNDATION, SPECULATION. IT'S INTERPRETING WHAT THIS  
5 ARTICLE SAYS.

6 THE COURT: LAY A FOUNDATION IF HE KNOWS.

7 MR. MCELHINNY: I'LL REPHRASE IT.

8 Q. SIR, IN YOUR VIEW, BASED ON YOUR EXPERIENCE AT APPLE AND  
9 YOUR KNOWLEDGE OF THE PROCESS, DO YOU FIND SIGNIFICANCE IN THAT  
10 SECOND QUOTE?

11 A. YES, I DO.

12 Q. WHAT IS THE SIGNIFICANCE THAT YOU FIND, SIR?

13 MR. PRICE: I'LL OBJECT TO RELEVANCE WITH HIS VIEW OF  
14 THE SIGNIFICANCE OF THAT QUOTE.

15 THE COURT: ALL RIGHT.

16 OVERRULED.

17 GO AHEAD. YOU MAY ANSWER.

18 THE WITNESS: AS WE WORK ON PRODUCTS AT APPLE AND THE  
19 DEVELOPMENT PROCESSES, AS WE DISCUSSED EARLIER, IT TAKES YEARS,  
20 IT INVOLVES MANY HUNDREDS OF ENGINEERS AND PEOPLE WORKING  
21 TOGETHER, AND THESE INVENTIONS, MANY OF THEM ARE PATENTED AND  
22 THEY APPEAR IN THE PRODUCT, THROUGHOUT TIME, AT DIFFERENT  
23 TIMES, SOMETIMES RIGHT AWAY, SOMETIMES NOT UNTIL MUCH LATER .  
24 THEY'RE ALL PART OF A PROCESS THAT OCCURS.

25 AND SOMETIMES ALL THOSE PATENTS, A LOT OF PATENTS ALL COME

1 TOGETHER TO MAKE ONE PRODUCT AS THIS SAYS.

2 THAT'S NOT ALWAYS THE CASE. IT VARIES AND EACH CASE IS  
3 UNIQUE.

4 BY MR. MCELHINNY:

5 Q. YOU MENTIONED THE APPLE NEW PRODUCT PROCESS, AND YOU MAY  
6 HAVE GIVEN US AN EXAMPLE, BUT IS IT A LINEAR PROCESS, ONCE YOU  
7 START ON A PRODUCT, YOU WORK ON IT TO THE END AND THEN YOU WORK  
8 ON A NEW PRODUCT FROM THE BEGINNING TO THE END? IS IT IN ORDER  
9 LIKE THAT?

10 A. NO. THERE IS A PROCESS WE FOLLOW THAT HAS VERY RIGID  
11 MILESTONES IN THEM THAT ARE LAID OUT.

12 BUT THE DEVELOPMENT WORK HAPPENS THROUGHOUT. TIME THINGS  
13 ARE INVENTED EARLY IN THE PROCESS, SOMETIMES LATER IN THE  
14 PROCESS. THERE ARE MULTIPLE PROGRAMS AT ANPP GOING ON IN  
15 PARALLEL TOGETHER AT DIFFERENT STAGES OF THE DEVELOPMENT.

16 SO IT IS A FORMAL PROCESS WITH MANY ELEMENTS HAPPENING IN  
17 PARALLEL.

18 Q. DID THE IPHONE DEVELOPMENT PROCESS RESULT IN INVENTIONS  
19 THAT WEREN'T IMMEDIATELY INCORPORATED INTO THE IPHONE?

20 A. YES, OF COURSE.

21 Q. AND FROM APPLE'S PERSPECTIVE, ARE THOSE INVENTIONS STILL  
22 VALUABLE TO APPLE?

23 A. EXTREMELY. WE'RE STILL IN A MARKET HERE WHERE WE'RE  
24 INVENTING NEW VERSIONS OF THE IPHONE, NEW VERSIONS OF OUR  
25 OPERATING SYSTEM. IT'S STILL GROWING AND THERE'S SO MUCH MORE

1 TO DO TO HELP CUSTOMERS AND CREATE NEW VALUE IN OUR BUSINESS.

2 IT'S LONG FROM OVER.

3 Q. SIR, LET'S MOVE TO A SLIGHTLY DIFFERENT SUBJECT.

4 WHAT WERE THE SALES FIGURES LIKE FOR THE ORIGINAL IPHONE?

5 A. THEY WERE REALLY GREAT.

6 Q. HAVE YOU PREPARED A SUMMARY FOR THIS JURY WHICH SHOWS

7 THOSE SALES NUMBERS?

8 A. YES.

9 MR. MCELHINNY: YOUR HONOR --

10 Q. OR WOULD YOU OPEN YOUR BINDER, PLEASE, TO PX 143.

11 A. OKAY.

12 Q. WHAT IS PX 143?

13 A. THIS IS A CHART THAT WE PREPARED OF CUMULATIVE UNIT SALES  
14 OF THE IPHONE AND IPAD.

15 MR. MCELHINNY: YOUR HONOR, I MOVE PLAINTIFF'S

16 EXHIBIT 143.

17 MR. PRICE: NO FURTHER OBJECTION.

18 THE COURT: IT'S ADMITTED.

19 (PLAINTIFF'S EXHIBIT 143 WAS ADMITTED IN EVIDENCE.)

20 THE COURT: GO AHEAD, PLEASE.

21 MR. MCELHINNY: ALL RIGHT. WE'LL PUT IT ON THE BOARD  
22 THERE.

23 Q. SO CAN YOU -- WHERE DO WE FIND THERE AT LEAST THE INITIAL  
24 SALES FOR THE IPHONES?

25 A. SO THIS IS A CHART OF CUMULATIVE SALES, SO SALES AS

1       THEY'RE GROWING OVER TIME. THE VERTICAL SCALE IS MILLIONS OF  
2       UNITS, AND TIME IS ALONG THE BOTTOM SCALE, FROM 2007 AT THE  
3       BEGINNING OF THE IPHONE UNTIL LATE 2013.

4               AND THE BLUE LINE REPRESENTS THE CUMULATIVE SALES OF  
5       IPHONE WITH EACH QUARTERLY TOTAL OF SALES.

6       Q. AND CAN YOU SUMMARIZE FOR US WHAT THE ORIGINAL, THE SALES  
7       OF THE ORIGINAL IPHONE WERE?

8       A. YES. AS YOU CAN SEE IN THE BEGINNING, THE VERY FIRST  
9       QUARTER, WE SOLD THE IPHONE, WE STARTED QUITE MODESTLY WITH  
10       300,000 UNITS, A GREAT LAUNCH FOR US, BUT WE HAD NO IDEA WHERE  
11       IT WAS ALL GROWING. AND YOU CAN SEE IT GREW VERY QUICKLY TO  
12       OVER A MILLION AND THEN OVER 5 MILLION AT THE START OF 2008,  
13       OVER 10 MILLION AT THE START OF 2009, AND ON AND ON.

14               THE COURT: CAN I ASK YOU ONE QUESTION. WHEN YOU  
15       KEEP SAYING "NO FURTHER OBJECTION," THERE WAS NO OBJECTION  
16       FILED TO SOME OF THESE. WHAT ARE YOU PRESERVING, JUST SO I  
17       KNOW?

18               MR. PRICE: THE MOTIONS IN LIMINE OBJECTIONS, YOUR  
19       HONOR.

20               THE COURT: OKAY. THEY WERE NOT TO EVERY SINGLE  
21       EXHIBIT.

22               MR. PRICE: PARDON ME?

23               THE COURT: THEY WERE NOT TO EVERY SINGLE EXHIBIT,  
24       BUT LET'S TALK ABOUT THIS LATER.

25               MR. PRICE: SURE.

1 THE COURT: ALL RIGHT. GO AHEAD, PLEASE.

2 MR. MCELHINNY: THANK YOU.

3 Q. DOES THIS CHART ALSO SHOW THE SALES OF SUBSEQUENT MODELS  
4 OF THE IPHONE AFTER THE ORIGINAL IPHONE?

5 A. IT DOES. WITH EACH YEAR, THERE WERE NEW MODELS AND EACH  
6 YEAR'S SALES HAVE ACCELERATED AND GROWN THROUGHOUT THIS TIME.

7 Q. AND CAN YOU TELL US WHAT THE TOTAL WAS THROUGH THE END OF  
8 2013?

9 A. YES. YOU CAN SEE AT THE TOP RIGHT CORNER ON THAT, AT THE  
10 VERY HIGHEST POINT OF THAT BLUE LINE, IT'S JUST SHY OF 170  
11 MILLION UNITS.

12 Q. FROM YOUR POSITION AS THE HEAD OF MARKETING AT APPLE, DID  
13 YOU OBSERVE CHANGES IN THE PHONE MARKETPLACE AS A RESULT OF THE  
14 INTRODUCTION OF THE IPHONE?

15 A. YES.

16 Q. AND CAN YOU DESCRIBE THOSE CHANGES FOR US?

17 MR. PRICE: OBJECTION. VAGUE, AMBIGUOUS.

18 THE COURT: OVERRULED.

19 GO AHEAD, PLEASE.

20 THE WITNESS: WHAT WE HOPED FOR, WHAT WE EXPECTED TO  
21 HAVE HAPPEN DID, IN FACT, OCCUR, WHICH WAS THAT BEFORE THE  
22 IPHONE, THE MAJORITY OF PHONES THAT EVERYBODY HAD THAT WE ALL  
23 USED WERE WHAT WE CALLED FEATURE PHONES.

24 THEY'RE SIMPLER DEVICES THAT HAD A SCREEN WHERE YOU COULD  
25 MAKE YOUR CALLS AND KEEP YOUR CONTACTS ON THEM. IT HAD A SMALL

1           KEYPAD FOR DIALLING ON IT.

2                   AND THEN AFTER THE IPHONE, THERE WAS A DRAMATIC CHANGE IN  
3           THE MARKETPLACE AND PHONES NOW COULD BECOME SMARTER AND BE  
4           DRIVEN BY POWERFUL SOFTWARE THAT LETS YOU DO THINGS ON THE  
5           INTERNET AND ACCESS ALL YOUR MEDIA AND ALL THESE THINGS THAT WE  
6           DREAMT THE IPHONE COULD DO, IT REALLY DID CHANGE THE WORLD OF  
7           PHONES.

8           Q.    SIR, HAS IT BEEN APPLE'S EXPERIENCE THAT WHEN A CUSTOMER  
9           BUYS AN APPLE PRODUCT, THEY TEND TO BUY ADDITIONAL APPLE  
10          PRODUCTS?   OR SERVICES?

11          A.    YES, IT IS.

12          Q.    AND CAN YOU DESCRIBE THAT FOR US?

13          A.    WELL, OFTEN WHEN A CUSTOMER PURCHASES A PRODUCT OF OURS,  
14          AN IPHONE, AN IPAD OR ANOTHER DEVICE, THAT IF THEY HAVE A GREAT  
15          EXPERIENCE WITH IT AND THEY REALLY LOVE IT, THEY'LL TEND TO BUY  
16          OTHER THINGS WITH IT, THE ECOSYSTEM, ACCESSORIES AND OTHER  
17          PRODUCTS THAT THEY MIGHT WANT TO USE WITH IT.

18                   AND IF THEY CONTINUE TO HAVE A GREAT EXPERIENCE WITH IT,  
19          THEY'RE LIKELY TO BUY MORE PRODUCTS FROM US DOWN THE ROAD, NOT  
20          ONLY A SMARTPHONE, BUT MAYBE A COMPUTER.   THEY MIGHT BUY A MAC  
21          FROM US.

22                   WE ALSO OBSERVED A NETWORK EFFECT OF CUSTOMERS WHO BUY OUR  
23          PRODUCTS.   IF THEY'VE HAD A GREAT TIME WITH IT, THEY'LL TELL  
24          FAMILY AND FRIENDS AND THEY MAY START TO BUY IPHONES AND MACS  
25          AND OTHER PRODUCTS.   OR IN THE WORK PLACE, IF THEY FIND I CAN

1 USE THIS IPHONE AT WORK AND GET MY E-MAIL, OTHER PEOPLE MAY  
2 LEARN THAT AND THEY ALL START TO HAVE THEM AS WELL.

3 SO THERE'S A LOT OF ECOSYSTEM EFFECTS ONCE SOMEONE STARTS  
4 TO BUY AND USE OUR PRODUCT IF THEY LOVE THEM.

5 Q. SIR, I WANT TO TURN BRIEFLY TO THE IPAD.

6 CAN YOU TELL US -- AGAIN, I REALLY DO WANT TO DO THIS  
7 BRIEFLY -- WHAT WAS THE GENESIS OF THE IPAD PRODUCT?

8 A. IN THE BEGINNING OF WORKING ON THE IPAD, WE WERE TRYING TO  
9 INVENT A MORE AFFORDABLE COMPUTER. OUR MOST POPULAR MACS WERE  
10 NOTEBOOKS AND NOTEBOOK PRICING WAS GOING DOWN AND WE THOUGHT  
11 EVENTUALLY NOTEBOOK PRICES WERE GOING TO DROP WELL BELOW \$500.

12 BUT COMPETITORS WERE MAKING SOME REALLY CHEAP PRODUCTS  
13 THAT WE WOULD NEVER BE PROUD TO MAKE. THE QUALITY REALLY  
14 WASN'T THERE. SO WE CHALLENGED OUR TEAM TO HELP US FIGURE OUT  
15 HOW COULD WE MAKE A FUTURE MOBILE COMPUTER THAT HAD FEWER  
16 MOVING PARTS, KEYBOARDS, THAT WOULD ALLOW US TO MAKE A NOTEBOOK  
17 REPLACEMENT THAT WAS EVEN MORE AFFORDABLE.

18 AND WE STARTED WORKING ON THAT AND WE HAD PROBABLY ONE OF  
19 THE MOST IMPORTANT THINGS TO SOLVE WOULD BE TO GET RID OF THE  
20 PHYSICAL KEYBOARD AND USE THE SCREEN TO TYPE DIRECTLY ON -- TO  
21 GET RID OF THE MOUSE OR TRACK PAD AND USE THE SCREEN TO  
22 MANIPULATE OBJECTS ON.

23 AND THAT'S WHAT LED US TO WORK ON MULTITOUCH TECHNOLOGY  
24 THAT EVENTUALLY GAVE RISE TO BOTH THE IPAD AND IPHONE.

25 Q. WHEN WAS THE IPAD ANNOUNCED?

1 A. IN JANUARY OF 2010.

2 Q. SO THAT'S THREE YEARS AFTER THE IPHONE; CORRECT?

3 A. YES, IT IS.

4 Q. WHEN WAS THE IPAD RELEASED?

5 A. IN APRIL OF 2010.

6 Q. WHAT WAS, GENERALLY, THE RECEPTION FOR THE IPAD?

7 A. THERE WAS TREMENDOUS EXCITEMENT AND INCREDIBLE MEDIA  
8 COVERAGE AROUND THE IPAD.

9 Q. WAS THE IPAD INVESTMENT PROJECT CONSIDERED A GAMBLE AT  
10 APPLE?

11 A. YES. IT WAS ALSO A "YOU BET YOUR COMPANY" PRODUCT, FIRST  
12 BECAUSE WE WERE ADDING NOW A FOURTH PRODUCT IN OUR BUSINESS,  
13 MAC, IPOD, IPHONE, AND NOW IPAD, WE DIDN'T WANT TO DILUTE OUR  
14 RESOURCES TOO MUCH BY TAKING ON YET ANOTHER THING. SO THAT  
15 WOULD RISK OTHER WORK.

16 AND UP UNTIL THAT POINT IN TIME, BEFORE IPAD, OTHER  
17 COMPANIES HAD TRIED TABLET LIKE COMPUTERS AND NONE HAD DONE  
18 WELL.

19 SO HERE WE ARE DOING BETTER WITH -- THE IPOD WAS DOING  
20 REALLY WELL, AND NOW THE IPHONE IS DOING REALLY WELL, AND WE'RE  
21 ABOUT TO TAKE ON SOMETHING RISKY THAT OTHERS HAD TRIED AND  
22 FAILED AT AND WE RISKED THE REPUTATION OF APPLE IF WE WERE TO  
23 FAIL AT THAT.

24 Q. HOW WERE THE SALES OF THE IPAD PRODUCT?

25 A. OH, THE EARLY SALES OF THE IPOD WERE EVEN STRONGER THAN



1 IPHONE. IT WAS GREAT.

2 Q. LET'S GO BACK TO EXHIBIT 143. WHAT DOES THIS TELL US  
3 ABOUT THE SALES OF THE IPAD?

4 A. WELL, YOU CAN SEE ON THE SAME CHART THE ORANGE LINE ON THE  
5 BOTTOM OF THE CHART, AND THAT TRACKS THE CUMULATIVE SALES OF  
6 THE IPAD HERE IN THE U.S. FROM THE BEGINNING IN 2010 UP UNTIL  
7 2013.

8 Q. MR. SCHILLER, DID APPLE SEEK PATENT PROTECTION FOR THE  
9 INVENTIONS IT MADE LEADING UP TO AND DURING THE DEVELOPMENT OF  
10 THE IPHONE AND THE IPAD?

11 A. YES.

12 Q. WHY?

13 A. WELL, THERE ARE MANY REASONS TO WANT, TO GET PATENTS ON  
14 OUR INVENTIONS.

15 FIRST, WE HAVE A LOT OF REALLY BRIGHT ENGINEERS WHO PUT IN  
16 LONG HOURS AND PUT A LOT OF THEMSELVES PERSONALLY INTO CREATING  
17 THESE THINGS, THESE IDEAS THEY DREAM UP AND THE INVENTIONS THAT  
18 THEY COME UP WITH.

19 AND THOSE ARE THINGS THAT ARE CREATED FOR APPLE. WE'RE A  
20 PRODUCT COMPANY, A TECHNOLOGY PRODUCT COMPANY. WE MAKE  
21 PRODUCTS THAT ARE HOPEFULLY UNIQUE AND SPECIAL. THAT'S WHAT WE  
22 TRY TO DO.

23 AND THOSE INVENTIONS, IF THEY'RE UNIQUE AND SPECIAL, WE  
24 WANT TO USE THEM IN OUR PRODUCTS FOR OURSELVES, TO  
25 DIFFERENTIATE OURSELVES FROM THE REST OF THE MARKET.

1           AND PATENTS HOPEFULLY HELP TO PROTECT US SO THAT WE CAN DO  
2           THAT AND HAVE OUR UNIQUE ADVANTAGES.

3           THEY ALSO HELP IDENTIFY THOSE THINGS THAT WE'VE CREATED IN  
4           OUR PRODUCTS THAT ARE UNIQUE TO APPLE THAT PEOPLE WILL  
5           RECOGNIZE AND SEE AS APPLE INVENTING THEM, BEING THE CREATIVE  
6           INVENTOR COMPANY WE LIKE TO BE SEEN AS.

7           I THINK IT'S REALLY IMPORTANT TO THE VERY DNA OF APPLE  
8           THAT WE'RE AN INNOVATOR WHO CREATES UNIQUE DIFFERENTIATIONS IN  
9           OUR PRODUCTS THAT CUSTOMERS VALUE.

10          Q.    SIR, BASED ON YOUR JOB RESPONSIBILITIES, WHAT YOU DO AND  
11          YOUR EXPERIENCE AT APPLE, WHAT ARE YOUR VIEWS ABOUT SOME OF THE  
12          REASONS WHY THE IPHONE HAS BEEN SO SUCCESSFUL.

13               MR. PRICE:   OBJECTION, YOUR HONOR.   CALLS FOR EXPERT  
14          TESTIMONY.

15               THE COURT:   OVERRULED.

16          GO AHEAD, PLEASE.

17               THE WITNESS:   IN MY JOB WORKING ON THE IPHONE, HAVING  
18          A UNIQUE PRODUCT THAT SOLVES PROBLEMS FOR CUSTOMERS IN SPECIAL  
19          WAYS AND MAKES THEM EASY AND FUN AND POWERFUL TO USE IS THE  
20          VERY ESSENCE OF WHAT MAKES IT GREAT AND WHAT MAKES IT  
21          SUCCESSFUL.

22          BY MR. MCELHINNY:

23          Q.    AND WHAT ARE THE REASONS FOR THE SUCCESS OF THE IPAD, SIR?

24          A.    IN THE SAME WAY.   WE'VE CREATED A PRODUCT THAT, UNLIKE ANY  
25          PRODUCT BEFORE IT IN ITS CATEGORY, HAS SUCCEEDED BECAUSE IT'S

1 BEAUTIFUL AND IT DOES THINGS YOU NEED IT TO DO AND IT DOES IT  
2 IN FUN, INTUITIVE, EASY-TO-USE WAYS, AND THAT'S SO MUCH ABOUT  
3 THE SOFTWARE AND ULTIMATELY THE ENTIRE USER EXPERIENCE WE  
4 CREATED.

5 Q. SIR, WOULD YOU OPEN YOUR BINDER, PLEASE, TO EXHIBIT 122A.

6 A. OKAY.

7 Q. WHAT IS EXHIBIT 122A?

8 A. THIS IS A, A SUMMARY OF A QUESTION WE'VE ASKED CUSTOMERS  
9 IN OUR MARKET RESEARCH SURVEYS, IN THIS CASE IPHONE BUYERS,  
10 ABOUT THEIR EXPERIENCE WITH AN IPHONE.

11 Q. AND WHAT TIME PERIOD DO THOSE SURVEYS COVER, SIR, LOOKING  
12 AT BOTH PAGES 1 AND 2?

13 A. FROM THE FIRST QUARTER OF FISCAL 2011 UP UNTIL THE FOURTH  
14 QUARTER OF FISCAL 2012.

15 MR. MCELHINNY: YOUR HONOR, I MOVE EXHIBIT 122A.

16 MR. PRICE: YOUR HONOR, I OBJECT AS BEING  
17 INAPPROPRIATE SUMMARIES.

18 SPECIFICALLY, AND I THINK WE HAVE AN AGREEMENT ON THIS, I  
19 BELIEVE THERE WAS AN AGREEMENT NOT TO EVEN ATTEMPT TO ADMIT  
20 PAGE 3.

21 THE COURT: I'M SORRY. I COULDN'T HEAR THE LAST  
22 THING YOU SAID.

23 MR. PRICE: I BELIEVE THERE WAS AN AGREEMENT NOT TO  
24 ADMIT PAGE 3.

25 (DISCUSSION OFF THE RECORD BETWEEN COUNSEL.)

1 MR. PRICE: HOLD ON ONE SECOND, YOUR HONOR. LET ME  
2 LOOK AT THE NEW EXHIBIT.

3 (DISCUSSION OFF THE RECORD BETWEEN COUNSEL.)

4 MR. PRICE: YOUR HONOR, I NOW HAVE A CORRECT COPY.  
5 THE ONLY OBJECTION IS THAT IT'S AN INAPPROPRIATE SUMMARY. IT'S  
6 NOT -- IT'S NOT A COMPLICATED DOCUMENT OR VOLUMINOUS DOCUMENTS.

7 THE COURT: ALL RIGHT. SO YOU'RE MAKING A 1006  
8 OBJECTION? THAT'S OVERRULED.

9 GO AHEAD, PLEASE.

10 BY MR. MCELHINNY:

11 Q. CAN WE PUT THIS UP ON THE SCREEN, PLEASE, FIRST PAGE.

12 MR. SCHILLER, WHAT IS AN IPHONE BUYER SURVEY?

13 A. MY MARKET RESEARCH TEAM --

14 Q. LET ME STOP YOU RIGHT THERE. WHAT IS A MARKET RESEARCH  
15 TEAM?

16 A. IT'S A SMALL GROUP OF PEOPLE WHO WORK FOR ME WHO HELP US  
17 LOOK BOTH AT PRIMARY RESEARCH, QUESTIONS WE CAN ASK OF  
18 CUSTOMERS AND PULL TOGETHER RESULTS, AS WELL AS SECONDARY  
19 RESEARCH, THAT'S RESEARCH THAT OTHER PEOPLE DO THAT WE CAN  
20 PURCHASE AND LOOK AT AND SEE WHAT THEY'VE LEARNED OR FOUND OUT.

21 AND MY TEAM IS RESPONSIBLE FOR THOSE TWO THINGS.

22 Q. ALL RIGHT. I APOLOGIZE FOR INTERRUPTING YOU. BACK TO  
23 WHAT IS AN IPHONE BUYER SURVEY?

24 A. SO THIS IS A SURVEY THAT WE RUN EACH QUARTER THAT ASKS  
25 QUESTIONS OF RECENT IPHONE BUYERS TO FIND OUT SOME OF THE

1 THINGS THEY THINK ABOUT IPHONE.

2 Q. AND WHO DETERMINES WHAT QUESTIONS GET ASKED ON THESE  
3 SURVEYS?

4 A. MY TEAM DOES.

5 Q. AND ARE THE SURVEYS THEMSELVES THAT ARE -- THAT THIS  
6 DOCUMENT SUMMARIZES, ARE THEY CONSIDERED CONFIDENTIAL DOCUMENTS  
7 AT APPLE?

8 A. YES, THEY ARE.

9 Q. AND WHY IS THAT?

10 A. BECAUSE ANY COMPANY, AND THIS IS CERTAINLY TRUE IN OUR  
11 CASE, HAS A UNIQUE ABILITY TO SPEAK TO YOUR OWN CUSTOMER. OUR  
12 COMPETITORS DON'T KNOW OUR CUSTOMERS WELL, BUT WE HAVE AN  
13 ABILITY TO SPEAK TO THEM AND ASK THEM QUESTIONS AND THEN GATHER  
14 THIS DATA AND GAIN INSIGHTS AS TO WHAT THEY MAY THINK, AND WE  
15 CONSIDER THAT CONFIDENTIAL.

16 Q. SIR, CAN YOU EXPLAIN TO US WHAT WE'RE SEEING ON THIS  
17 SUMMARY, ON PAGE 1 OF THE SUMMARY THAT WE'VE GOT HERE?

18 A. YES. THIS IS A SUMMARY OF ONE QUESTION THAT WAS ASKED  
19 ACROSS MANY SURVEYS OVER PERIODS OF TIME WE LISTED.

20 THE SIMPLE QUESTION WAS HOW IMPORTANT WAS EASE OF USE TO  
21 YOUR DECISION TO PURCHASE YOUR IPHONE?

22 AND THESE ARE THE RESPONSES TO THAT QUESTION, AND  
23 SPECIFICALLY THE WAY WE LOOK AT THE RESPONSE IS CUSTOMERS ARE  
24 ASKED TO RANK THEIR BELIEF ON WHETHER THIS WAS IMPORTANT TO  
25 EASE OF USE ON A SCALE OF 1 TO 5. THE TOP TWO THINGS ARE

1 WHETHER IT WAS SOMEWHAT IMPORTANT OR VERY IMPORTANT.

2 AND IN MARKETING WHAT WE DO IS WE COMBINE THOSE TWO TOP  
3 SCORES TO CREATE ONE TOTAL SCORE, AND THAT'S A MEASURE OF HOW  
4 IMPORTANT IT IS THAT YOU COMPARE AMONGST DIFFERENT QUESTIONS  
5 AND DIFFERENT SURVEYS.

6 Q. SIR, WHY DO YOU USE THE PHRASE "EASE OF USE" IN YOUR  
7 SURVEYS?

8 A. I THINK EASE OF USE IS ONE OF THE MOST IMPORTANT THINGS  
9 APPLE HAS DONE FOR CUSTOMERS OF OUR PRODUCTS OVER THE YEARS.  
10 IT'S ONE OF THE MOST IMPORTANT THINGS WE TRY TO DELIVER IN OUR  
11 PRODUCTS, AND I THINK IT'S SOMETHING APPLE IS KNOWN FOR. SO  
12 IT'S INCREDIBLY IMPORTANT.

13 Q. AND WHAT IS IT, BASED ON YOUR UNDERSTANDING OF WHAT IT IS  
14 THAT MAKES THE SMARTPHONE EASY TO USE, WHY YOU GET THESE KINDS  
15 OF CUSTOMER RANKINGS?

16 A. WELL, THERE ISN'T ONE SPECIFIC FEATURE THAT SAYS EASE OF  
17 USE. THIS ISN'T A SWITCH ON THE SCREEN THAT SAYS EASY OR HARD.  
18 IT'S AN ACCUMULATION OF ALL THE THINGS THAT MAKE UP YOUR  
19 EXPERIENCE WITH THAT PRODUCT. AND THE PREDOMINANT RANGE OF  
20 THOSE THINGS ARE SOFTWARE, ALL THE GREAT SOFTWARE FEATURES THAT  
21 MAKE IT SO YOU UNDERSTAND HOW YOU CAN GET WHAT YOU WANT DONE  
22 AND YOU ENJOY DOING THAT. I THINK THAT ADDS UP TO YOUR  
23 EXPERIENCE OF EASE OF USE.

24 Q. IF YOU WOULD LOOK AT PAGE 2 OF THE SUMMARY THAT YOU  
25 PREPARED, CAN YOU EXPLAIN TO US WHAT WE'RE SEEING THERE,

1 PLEASE.

2 A. SO THIS LOOKS AT THAT SAME DATA OF ASKING CUSTOMERS ABOUT  
3 EASE OF USE WHERE WE HAD SUCH A HIGH RESPONSE RATE OVER TIME  
4 AND INSTEAD LOOKS AT IT BY INDIVIDUAL IPHONE MODEL. SO ACROSS  
5 ALL THAT TIME, YOU KNOW, WHAT DO CUSTOMERS THINK ABOUT EASE OF  
6 USE FROM IPHONE 4, IPHONE 4S, IPHONE 5 TO SEE IF THERE'S ANY  
7 DIFFERENT BY PRODUCT.

8 AND WHAT IT SHOWS IS THERE REALLY ISN'T ANY DIFFERENCE BY  
9 PRODUCT.

10 SO OVER TIME, OVER DIFFERENT PRODUCTS, THEY CONSISTENTLY  
11 TELL US THAT WELL OVER 90 PERCENT ON AVERAGE THINK EASE OF USE  
12 IS EXTREMELY IMPORTANT TO THEIR PURCHASE CHOICE OF AN IPHONE.

13 Q. SIR, IN YOUR BINDER, WOULD YOU PLEASE TURN TO EXHIBIT 123.

14 A. OKAY.

15 Q. AND CAN YOU TELL ME WHAT THAT DOCUMENT IS?

16 A. SO THIS IS A SURVEY THAT WAS DONE OF SMARTPHONE BUYERS  
17 FROM DIFFERENT VENDORS THAT ALSO WAS ASKING THE QUESTION OF  
18 EASE OF USE.

19 MR. MCELHINNY: YOUR HONOR, MAY I OFFER THE JUROR, OR  
20 SHOULD SOMEBODY OFFER THE JUROR SOME WATER, PLEASE.

21 JUROR: THAT WOULD BE GOOD.

22 THE COURT: OH, YES.

23 JUROR: I'M SORRY.

24 THE COURT: THAT WOULD BE GOOD. YOU KNOW, WE WERE  
25 GOING TO TAKE A BREAK AT 3:30. IT'S 3:29. IF YOU WOULD LIKE

1 TO TAKE ONE NOW, WE CAN DO THAT.

2 JUROR: THAT WOULD BE GREAT.

3 THE COURT: OKAY. IT'S 3:29. LET'S TAKE A 15 MINUTE  
4 BREAK.

5 AND YOU MAY STEP DOWN.

6 (JURY OUT AT 3:29 P.M.)

7 THE COURT: OKAY. THE RECORD SHOULD REFLECT THE  
8 JURORS HAVE LEFT THE COURTROOM.

9 PLEASE TAKE A SEAT.

10 I'M LOOKING AT THE MOTIONS IN LIMINE THAT SAMSUNG FILED.  
11 I DON'T SEE ANY THAT WOULD ADDRESS CUMULATIVE UNIT SALES OF  
12 IPHONE AND IPAD. SO I JUST WANT TO HAVE AN UNDERSTANDING OF  
13 WHAT IT IS THAT YOU'RE PRESERVING SINCE THERE WAS NO INDIVIDUAL  
14 OBJECTIONS FILED TO THIS PX 143, THE OBJECTIONS WERE TO 122,  
15 179, AND 211.

16 SO WHAT IS IT EXACTLY THAT'S BEING PRESERVED HERE, JUST SO  
17 I UNDERSTAND?

18 MR. PRICE: YOUR HONOR, I'VE BEEN TOLD YOU'RE RIGHT,  
19 WE DID NOT MAKE MOTIONS IN LIMINE ON THOSE, THOSE SPECIFIC  
20 EXHIBITS.

21 THE COURT: OKAY.

22 MR. PRICE: SO MY ONLY OBJECTION WAS TO 1006, WHICH  
23 YOU --

24 THE COURT: WHICH WAS NOT TO THIS ONE. WERE YOU  
25 MAKING -- I DIDN'T HEAR YOU MAKING A 1006 OBJECTION TO THIS



1 ONE. YOU SAID YOU WERE PRESERVING YOUR MOTION IN LIMINE  
2 OBJECTION, WHICH THERE IS NONE. SO --

3 MR. PRICE: AND I'VE BEEN TOLD THAT, AS IS USUALLY  
4 THE CASE, YOU'RE RIGHT.

5 THE COURT: I JUST WANT TO UNDERSTAND WHAT YOU'RE  
6 PRESERVING. I KNOW EVERYONE WANTS TO MAKE A GOOD RECORD.

7 MR. PRICE: I KNOW THE MAIN THING --

8 THE COURT: AND I ALSO WANT TO MAKE A GOOD RECORD,  
9 TOO. SO IF YOU'RE MAKING AN OBJECTION, I WANT TO KNOW WHAT IT  
10 IS SO THAT I CAN MAKE AN APPROPRIATE RULING. THAT'S WHY I'M  
11 ASKING.

12 MR. PRICE: I UNDERSTAND WHY YOU'RE ASKING. WE'VE  
13 MADE A LOT OF OBJECTIONS ABOUT NEWSPAPER ARTICLES, ET CETERA.

14 THE COURT: SURE, I TOTALLY UNDERSTAND. THAT WAS  
15 MOTION IN LIMINE NUMBER --

16 (PAUSE IN PROCEEDINGS.)

17 THE CLERK: THERE'S A REQUEST FOR SOME LOZENGES.

18 THE COURT: OH, OKAY. I HAVE SOME. OH, LET SAMSUNG  
19 INSPECT THOSE.

20 (LAUGHTER.)

21 MS. KREVANS: THEY'RE MINE, YOUR HONOR.

22 MR. MCELHINNY: WOULD YOU PLEASE TELL THE JURY THAT  
23 SAMSUNG DIDN'T WANT THEM TO HAVE THESE.

24 THE COURT: AND WE CAN GET SOME MORE. AND I'M GOING  
25 TO BRING UP THE EMERGENCY AND AIRBORNE AND EVERYTHING ELSE. WE

1 CANNOT --

2 OKAY. I UNDERSTAND. ALL RIGHT. SO FOR 143, I'M  
3 UNDERSTANDING THERE WAS NOT A 1006 OBJECTION. IF THERE WAS, I  
4 WOULD OVERRULE IT BECAUSE OTHERWISE TRYING TO INTRODUCE SINGLE  
5 SALES NUMBERS FOR EVERY QUARTER FOR A PERIOD OF SEVEN YEARS I  
6 THINK WOULD -- IT WOULD BE HELPFUL TO A JURY TO HAVE A  
7 CUMULATIVE PRESENTATION, A SUMMARY PRESENTATION OF THAT TYPE OF  
8 CUMULATIVE AND LENGTHY EVIDENCE.

9 BUT I UNDERSTAND THERE'S NO MOTION IN LIMINE OBJECTION AS  
10 TO 143.

11 MR. PRICE: YOU'RE CORRECT.

12 THE COURT: GOT IT. ALL RIGHT. THANK YOU. LET'S  
13 TAKE OUR BREAK.

14 MR. MCELHINNY: WHAT TIME DO YOU WANT US BACK, YOUR  
15 HONOR?

16 THE COURT: TEN MINUTES.

17 MR. MCELHINNY: TEN MINUTES. THANK YOU.

18 THE COURT: YEAH. THANK YOU.

19 (RECESS FROM 3:33 P.M. UNTIL 3:43 P.M.)

20 THE COURT: ALL RIGHT. LET'S PLEASE BRING IN OUR  
21 JURY.

22 (JURY IN AT 3:44 P.M.)

23 THE COURT: ALL RIGHT. WELCOME BACK.

24 DO WE HAVE EIGHT?

25 THE CLERK: WE ARE --

1 THE COURT: OKAY. I JUST DIDN'T SEE THE EIGHTH  
2 PERSON. THAT'S WHY.

3 (LAUGHTER.)

4 THE COURT: ALL RIGHT. AND WOULD EVERYONE PLEASE  
5 TAKE A SEAT.

6 TIME IS NOW 3:44. GO AHEAD, PLEASE.

7 BY MR. MCELHINNY:

8 Q. MR. SCHILLER, WOULD YOU LOOK, PLEASE, IN YOUR BINDER AT  
9 PLAINTIFF'S EXHIBIT 123.

10 A. YES.

11 Q. WHAT IS EXHIBIT 123, SIR?

12 A. THIS IS A SUMMARY OF A SMARTPHONE MARKET BUYER STUDY.

13 Q. FOR WHAT TIME PERIOD DOES IT COVER?

14 A. FROM THE FOURTH QUARTER OF FISCAL 2011 UNTIL THE FOURTH  
15 QUARTER OF FISCAL 2012.

16 MR. MCELHINNY: YOUR HONOR, I MOVE THE SUMMARY,  
17 PX 123.

18 MR. PRICE: NO OBJECTION.

19 THE COURT: ALL RIGHT. IT'S ADMITTED.

20 (PLAINTIFF'S EXHIBIT 123 WAS ADMITTED IN EVIDENCE.)

21 THE COURT: GO AHEAD, PLEASE.

22 BY MR. MCELHINNY:

23 Q. MR. SCHILLER, CAN YOU TELL US WHAT WE'RE LOOKING AT HERE  
24 IN THE SUMMARY?

25 A. YES. THIS IS ALSO A QUESTION THAT WAS ASKED OF CUSTOMERS

1 OF BOTH IPHONES, AS WELL AS ANDROID PHONES, HOW IMPORTANT OR  
2 UNIMPORTANT WAS EASE OF USE TO THEIR DECISION TO PURCHASE A  
3 PHONE?

4 AND YOU CAN SEE IN BLUE COLOR THERE ARE THE BARS FOR THE  
5 IPHONE OR IOS USERS, AND IN GREEN, THE ANDROID PHONE USERS AND  
6 WHAT THEY FELT ABOUT THE IMPORTANCE OF EASE OF USE.

7 Q. AND, AGAIN, SO WE'RE CLEAR, WHAT'S THE DIFFERENCE BETWEEN  
8 THE SURVEYS THAT WENT INTO THIS SUMMARY AND THE SURVEYS OF THE  
9 PRIOR SUMMARY THAT YOU WERE TALKING ABOUT?

10 A. WELL, THE PRIOR SUMMARY, WE HAD ACCESS TO SURVEYING OUR  
11 OWN CUSTOMERS.

12 WHEN IT COMES TO A SURVEY WHERE YOU'RE SURVEYING CUSTOMERS  
13 OF OTHER PRODUCTS, YOU HAVE TO TURN TO OTHER MEANS THAT ARE  
14 USEFUL, BUT NOT QUITE AS GOOD YOUR OWN.

15 IN THIS CASE YOU WORK WITH AN OUTSIDE COMPANY THAT HAD  
16 ACCESS TO THE INTERNET COMMUNITY, PEOPLE THAT THEY OFTEN ASK  
17 QUESTIONS OF.

18 SO IT'S AN INTERESTING RESULT. IT'S GOOD, BUT NOT AS  
19 GOOD.

20 Q. LET'S LOOK AT PAGE 2 OF THIS SURVEY, AND WHAT DOES THIS  
21 TELL US, OF THE SUMMARIES OF THE SURVEYS. WHAT DOES THIS TELL  
22 US?

23 A. SO THIS PAGE IS ABOUT THE QUESTION ABOUT HOW LIKELY THESE  
24 BUYERS WERE TO PURCHASE AN IPHONE IN THE FUTURE TO FOLLOW ON  
25 THEIR PURCHASE WITH ANOTHER IPHONE.

1           AND, AGAIN, IT'S A TOP TWO BOX METRIC USE. SO PEOPLE WHO  
2           SELECTED EITHER SOMEWHAT LIKELY OR VERY LIKELY AS THEIR  
3           RESPONSE TOTALLED UP, AND AS YOU SEE, THAT IS A VERY, VERY  
4           STRONG RESPONSE TO GET WELL OVER 90 PERCENT OF CUSTOMERS ON  
5           AVERAGE TO SAY THAT THEY'RE LIKELY TO PURCHASE AN IPHONE AGAIN.

6           Q.    WOULD YOU SHOW US PAGE 3 OF THE SUMMARY, PLEASE.

7           AND WHAT DOES THIS TELL US?

8           A.    THIS IS A QUESTION THAT WAS ASKED OF THE PEOPLE IN THE  
9           SURVEY ABOUT WHETHER THEY ARE -- THIS DEVICE THEY CURRENTLY OWN  
10          IS THEIR FIRST SMARTPHONE WHETHER THEY'RE A FIRST-TIME  
11          SMARTPHONE BUYER, AND AS YOU SEE ACROSS THE BARS, THE NUMBER  
12          WAS VERY HIGH FOR FIRST-TIME BUYERS, ANYWHERE FROM JUST UNDER  
13          50 PERCENT TO AS HIGH AS 60 PERCENT OF PEOPLE WHO HAD BOUGHT A  
14          SMARTPHONE DURING THE TIME OF THE SURVEY WHO HAD NEVER HAD ONE  
15          BEFORE.

16          Q.    AND, AGAIN, I THINK THE YEARS MAY BE IMPORTANT HERE. WHAT  
17          IS THE TIME PERIOD THAT THE SURVEY IS SHOWING US THIS HIGH  
18          FIRST-TIME BUYERS PHENOMENA?

19          A.    THIS SURVEY PERIOD STARTED AT FOURTH QUARTER OF FISCAL  
20          2011 AND GO INTO THE FOURTH QUARTER OF FISCAL 2012.

21          Q.    WHAT IS THE FOURTH QUARTER OF APPLE'S FISCAL 2012?

22          A.    THAT IS THE JULY/AUGUST/SEPTEMBER QUARTER IS HOW WE COUNT  
23          FISCAL QUARTERS.

24          Q.    IN WHAT CALENDAR YEAR WOULD THAT BE?

25          A.    THAT WOULD BE 2012.

1 Q. THANK YOU. WHAT IS THE SIGNIFICANCE OF THIS NUMBER TO YOU  
2 AS THE HEAD OF MARKETING?

3 A. OH, IT'S INCREDIBLY IMPORTANT. IT SHOWS, FIRST OF ALL,  
4 WHAT WE'VE BEEN SAYING FROM DAY ONE WHEN WE STARTED WORK ON THE  
5 IPHONE IS THAT ONE DAY WE BELIEVE MOST EVERYONE WOULD HAVE A  
6 SMARTPHONE, AND WHERE WE ARE THROUGHOUT THIS PERIOD OF TIME IS  
7 STILL IN A TIME WHERE MANY, MANY PEOPLE DON'T HAVE A  
8 SMARTPHONE. THEY MAY NOT HAVE A CELL PHONE AT ALL OR THEY'RE  
9 LIKELY TO HAVE A FEATURE PHONE, PREVIOUS GENERATION OLDER  
10 TECHNOLOGY, AND ARE NOW GETTING A SMARTPHONE.

11 AND AT LEAST DURING THE PERIOD OF ALL OF THIS RESEARCH YOU  
12 SEE THAT STILL A VERY LARGE NUMBER OF PEOPLE ARE GETTING THEIR  
13 FIRST PHONE, AND THAT FIRST PHONE, AS WE TALKED ABOUT EARLIER,  
14 IS THE PHONE PURCHASE THAT WILL THEN HELP YOU DECIDE WHAT  
15 FOLLOW-ON PRODUCTS YOU MIGHT GET. IF YOU LIKE THAT PRODUCT,  
16 YOU'RE MORE LIKELY TO STAY WITH IT FOR A LOT LONGER.

17 Q. SIR, HAS APPLE MADE EFFORTS TO PROMOTE ITS PRODUCTS?

18 A. YES, IT HAS.

19 Q. AND WHAT KIND OF THINGS DO YOU DO TO PROMOTE YOUR  
20 PRODUCTS?

21 A. WELL, IN MARKETING WE HAVE MANY ACTIVITIES. WE PUT ON  
22 LARGE KEYNOTES AND EVENTS. WE DO PRESS REVIEWS OF OUR  
23 PRODUCTS; WE DO ADVERTISING; WE DO OUTDOOR MARKETING; WE SET UP  
24 DISPLAYS IN OUR RETAIL STORE AND WE TRAIN PEOPLE.

25 MANY, MANY THINGS.

1 Q. IS ADVERTISING IMPORTANT TO WHAT YOU DO?

2 A. IT IS. IT'S ONE OF THE MARKETING FUNCTIONS THAT I RUN.

3 Q. SIR, IS IT, IN YOUR OPINION, IS IT ADVERTISING THAT DRIVES  
4 THE SALES OF THE APPLE PRODUCTS?

5 A. NOT AT ALL.

6 Q. HELP ME WITH THAT. IF YOU SPEND AS MUCH TIME AS YOU DO ON  
7 ADVERTISING AND IT'S IMPORTANT, WHY DO YOU SAY IT DOESN'T DRIVE  
8 THE SALES OF YOUR PRODUCTS?

9 A. IN MY BELIEF IS THAT APPLE -- THE THING THAT'S MOST  
10 IMPORTANT TO THE MARKETING IS NOT THE MARKETING. IT'S THE  
11 PRODUCT.

12 AT THE END OF THE DAY, YOU CAN HAVE A HORRIBLE PRODUCT AND  
13 A GREAT AD. IT MIGHT NOT SELL WELL BECAUSE THE PRODUCT'S NOT  
14 SO GOOD.

15 OR YOU COULD HAVE A GREAT PRODUCT AND A HORRIBLE AD AND  
16 THE PRODUCT STILL MIGHT DO WELL BECAUSE IT'S A GREAT PRODUCT.

17 SO ADVERTISING IS A TOOL THAT'S USEFUL IN MARKETING, BUT  
18 THE CORRELATION BETWEEN THE AD AND A SALE I'VE NEVER FOUND AT  
19 APPLE TO BE VERY STRONG.

20 Q. IS THE VIEW THAT YOU'VE JUST EXPRESSED REFLECTED IN THE  
21 WAY THAT APPLE DOES ITS ADVERTISING?

22 A. I BELIEVE SO.

23 Q. AND HOW IS THAT?

24 A. WELL, WE'VE HAD A STRATEGY FOR QUITE A WHILE IN OUR  
25 MARKETING THAT WE CALL "THE PRODUCT AS HERO."

1 Q. EXPLAIN THAT FOR US, PLEASE.

2 A. IT'S A SIMPLE THOUGHT, BUT A -- IT HAS A HUGE IMPACT  
3 ACROSS OUR MARKETING, THAT IF THE MOST IMPORTANT THING TO THE  
4 CUSTOMER WANTING TO PURCHASE A PRODUCT IS THE PRODUCT ITSELF,  
5 THEN THE MARKETING SHOULD DO A GOOD JOB OF FOCUSING FIRST AND  
6 FOREMOST ON THE PRODUCT.

7 IT'S WHAT YOU SEE IN THE AD. IT'S WHAT YOU SEE ON THE  
8 BILLBOARD. IT'S WHAT YOU SEE WHEN YOU WALK INTO THE STORE.  
9 THE PRODUCT IS THE MOST IMPORTANT THING, YOU FOCUS MOST ON THAT  
10 PRODUCT.

11 Q. I WANT TO SWITCH SUBJECTS AGAIN.

12 IS SAMSUNG ONE OF APPLE'S COMPETITORS IN THE SMARTPHONE  
13 MARKET?

14 A. YES.

15 Q. LET ME SHOW YOU PDX 7, SIR, WHICH IS A LIST OF ACCUSED  
16 PRODUCTS IN THIS CASE.

17 DURING THE TIME THEY WERE ON THE MARKETPLACE, DID THOSE  
18 PRODUCTS COMPETE WITH APPLE'S SMARTPHONES AND TABLETS?

19 A. YES, THEY DID.

20 Q. SIR, DID APPLE OFFER ITS PRODUCTS TO ONLY CERTAIN SEGMENTS  
21 OF THE SMARTPHONE AND TABLET MARKET?

22 A. NOT AT ALL. IN THE WORLD OF MARKETING, THAT'S CALLED  
23 SEGMENTATION.

24 Q. CAN I INTERRUPT YOU? TELL US -- I SHOULD HAVE ASKED THE  
25 QUESTION BETTER. TELL US, PLEASE, WHAT SEGMENTATION IS IN THE



1 WORLD OF MARKETING?

2 A. IT'S A SIMPLE THOUGHT, THAT THERE ARE DIFFERENT SEGMENTS  
3 OF THE POPULATION, SOME PEOPLE CONSIDER SEGMENTS BY  
4 DEMOGRAPHICS, LIKE AGE GROUP OR INCOME.

5 OTHER PEOPLE LOOK AT SEGMENTATION BY WHAT KIND OF JOB YOU  
6 MAY HAVE, WHETHER YOU'RE IN EDUCATION OR BUSINESS AND THE KIND  
7 OF BUSINESS.

8 AT APPLE, THAT'S NEVER BEEN THE WAY WE WORK ON OUR  
9 PRODUCTS. THAT'S NEVER BEEN THE WAY WE MARKET OUR PRODUCTS.

10 WE HAVE A VERY SIMPLE PRINCIPLE. WE TRY TO MAKE OUR  
11 PRODUCTS FOR EVERYONE. IF YOU DO THAT, IT ACTUALLY KEEPS  
12 THINGS REALLY SIMPLE.

13 THE IPHONE, WHO DO WE MARKET AND DESIGN THE IPHONE FOR,  
14 FOR EVERYONE.

15 WE DESIGN THE IPAD FOR EVERYONE.

16 Q. SAMSUNG'S COUNSEL, IN HIS OPENING ARGUMENT, REFERRED TO  
17 SOMETHING, AND I'M NOT SURE WE ALL WOULD HAVE UNDERSTOOD WHAT  
18 IT WAS.

19 HE MENTIONED SOMETHING ABOUT CARRIER SUBSIDIES.

20 A. YES.

21 Q. CAN YOU TELL US WHAT CARRIER SUBSIDIES ARE AS THEY AFFECT  
22 PRICING IN THE CELL PHONE MARKET?

23 A. WHEN MANY CUSTOMERS HERE IN THE UNITED STATES GO TO  
24 PURCHASE A PHONE, IT ALMOST ALWAYS COMES WITH A CONTRACT TIME  
25 LENGTH. YOU CAN PURCHASE A PHONE, AND THEY MAY HAVE A TWO-YEAR

1 CONTRACT WITH THAT. AND THAT MEANS YOU'RE GOING TO STAY WITH  
2 THAT CARRIER FOR THAT PERIOD OF TIME.

3 AND IN EXCHANGE FOR THAT, WHAT THE CARRIER GIVES YOU IS A  
4 LOWER PRICE ON THE PHONE, AND THAT LOWERING OF THE PRICE,  
5 THAT'S WHAT'S CALLED A SUBSIDY.

6 Q. AND WHAT IS, TODAY, THE LOWEST PRICE AT WHICH AN IPHONE IS  
7 AVAILABLE TO A CONSUMER WHO WANTS TO GET ONE?

8 A. FOR FREE.

9 Q. HOW CAN THAT BE?

10 A. AGAIN, WHAT HAPPENS IS THAT OUR IPHONES ARE OFFERED BY  
11 CARRIERS IN THE UNITED STATES, YOU KNOW, CARRIERS LIKE AT&T AND  
12 VERIZON AND SPRINT, AND THEY OFFER THEM AND IF YOU PURCHASE IT  
13 WITH A CONTRACT TO STAY WITH THAT CARRIER, THAT THERE ARE  
14 MODELS OF IPHONE THAT WILL START FOR ZERO DOLLARS DOWN. YOU  
15 JUST GET THE IPHONE.

16 Q. DO APPLE AND SAMSUNG COMPETE HEAD-TO-HEAD IN PARTICULAR  
17 RETAIL CHANNELS?

18 A. YES, WE DO.

19 Q. AND CAN YOU GIVE US SOME EXAMPLES OF WHERE YOU COMPETE  
20 HEAD-TO-HEAD WITH SAMSUNG?

21 A. WE BOTH OFFER PRODUCTS FOR SALE IN A WIDE VARIETY OF  
22 CHANNELS. FOR EXAMPLE, CARRIER STORES, AGAIN, LIKE AT&T AND  
23 OTHERS, OR IN LARGE RESELLERS, LIKE BEST BUY WOULD BE AN  
24 EXAMPLE OF THOSE AND THROUGH ONLINE CHANNELS AND ON AND ON.

25 Q. SIR, CAN YOU TELL ME WHAT YOUR PERSONAL REACTION WAS WHEN

1 SAMSUNG'S GALAXY PHONES FIRST CAME ON TO THE MARKETPLACE?

2 MR. PRICE: OBJECTION. I'M GOING TO OBJECT. IT'S  
3 NOT RELEVANT WITH RESPECT TO THESE PATENTS IN THIS CASE.

4 MR. MCELHINNY: THIS IS FOUNDATIONAL TO THE EFFECTS  
5 OF COMPETITION, YOUR HONOR.

6 THE COURT: OVERRULED.

7 GO AHEAD, PLEASE.

8 THE WITNESS: I DO REMEMBER WHEN I FIRST SAW A  
9 SAMSUNG GALAXY PHONE BEING LAUNCHED. I READ ABOUT IT IN AN  
10 ONLINE NEWS STORY AND THE FIRST REACTION WAS SHOCK THAT IT  
11 APPEARED THAT THEY, THAT SAMSUNG, WAS GOING TO BE DOING A LOT  
12 OF COPYING OF OUR PRODUCT. IT LOOKED SO MUCH LIKE AN ATTEMPT  
13 TO COPY THE IPHONE.

14 BY MR. MCELHINNY:

15 Q. SIR, DOES COPYING, AS SUCH, CAUSE APPLE PRODUCTS PROBLEMS  
16 IN MARKETING?

17 A. IT CAUSES A LOT OF PROBLEMS, MUCH.

18 MR. PRICE: I OBJECT UNLESS IT'S COMING TO DAMAGES,  
19 INFLUENCE FROM THESE PATENTS, CLAIMS IN THIS CASE.

20 MR. MCELHINNY: THE DAMAGE CAUSED BY COPYING IS  
21 GENERIC, YOUR HONOR.

22 THE COURT: OVERRULED. GO AHEAD. YOU MAY ANSWER.

23 THE WITNESS: WELL, WE SPOKE EARLIER ABOUT HOW IN OUR  
24 MARKETING IT'S DOMINATED BY THE PRODUCT AS THE HERO. WE'RE  
25 TRYING TO SHOWCASE WHAT OUR PRODUCT IS, WHAT IT DOES, WHY IT'S

1 SO SPECIAL, WHY IT'S INNOVATIVE.

2 AND WHEN SOMEONE ELSE COPIES THINGS ABOUT THAT PRODUCT,  
3 INNOVATIONS WE'VE CREATED, IT DIMINISHES THE VALUE THAT WE'RE  
4 BRINGING TO CUSTOMERS. IT, FIRST OF ALL, TAKES AWAY  
5 CAPABILITIES THAT WERE UNIQUE TO US. SO THAT UNIQUENESS ISN'T  
6 AS EASY TO MARKET.

7 SECONDLY, IT CONFUSES CUSTOMERS ABOUT THE SOURCE OF THOSE  
8 THINGS, WHETHER APPLE IS BEING INNOVATOR AND DOING THESE THINGS  
9 OR WHETHER SAMSUNG OR SOMEONE ELSE IS INNOVATING, AND THAT  
10 CONFUSES CUSTOMERS AND TO THE EXTENT THAT THIS HAPPENS A LOT  
11 AND IT'S HAPPENING ON A VERY LARGE SCALE, MORE AND MORE IT  
12 DIMINISHES WHETHER PEOPLE EVEN SEE APPLE AS THE INNOVATOR WE  
13 ARE IN THE THINGS WE'RE CREATING.

14 AND AS THE MARKETER WHO HAS TO HELP CUSTOMERS UNDERSTAND  
15 THE INNOVATIONS AND THE EASE OF USE AND THE GREAT EXPERIENCE OF  
16 THE PHONE THAT WE CREATE, IT GETS HARDER AND MORE CHALLENGING  
17 IF OTHERS ARE COPYING THOSE THINGS AND YOU CAN'T STAND ON THEM  
18 AS YOUR OWN INNOVATIONS.

19 Q. SIR, ARE YOU GENERALLY FAMILIAR WITH THE FIVE PATENTS THAT  
20 ARE BEING SPECIFICALLY ASSERTED IN THIS CASE?

21 A. GENERALLY I AM, YES.

22 Q. JUST SO WE UNDERSTAND, AT WHAT LEVEL DO YOU UNDERSTAND  
23 THEM?

24 A. I KNOW THAT THERE ARE FIVE. I KNOW ROUGHLY WHAT THEY ARE  
25 AND CERTAINLY I'M AWARE OF THEM. AND NOT TO PROGRAMMING LEVEL

1       DETAIL, I'M NOT A PROGRAMMER, BUT I DO KNOW ABOUT THEM.

2       Q.    OKAY.  ARE YOU, AS A MEMBER OF THE EXECUTIVE TEAM, ARE YOU  
3       GENERALLY FAMILIAR WITH APPLE'S WILLINGNESS TO LICENSE ITS  
4       INTELLECTUAL PROPERTY TO OTHER COMPANIES?  JUST A YES OR NO TO  
5       THAT ONE.

6       A.    YES.

7       Q.    OKAY.  I WOULD LIKE YOU TO TAKE YOURSELF BACK, IF YOU CAN,  
8       TO AUGUST 2011.  CAN YOU DO THAT FOR ME?

9       A.    I WILL TRY.

10      Q.    CAN YOU HELP ME OUT?  SO THAT WE UNDERSTAND HOW YOU'RE  
11      GETTING THERE, ARE SOME GUIDEPOSTS OF EVENTS THAT HAPPENED AT  
12      APPLE DURING THAT PERIOD THAT YOU WOULD BE FAMILIAR WITH?

13      A.    WELL, AS I THINK OF THE SUMMER OF 2011, THE FIRST THING I  
14      THINK ABOUT WAS WHAT WE WERE WORKING ON AND DOING.  SO IN THAT  
15      SUMMER WE HAD INTRODUCED, NOT YET SHIPPED, THE LATEST VERSION  
16      OF OUR OPERATING SYSTEM, IOS 5 AT THAT TIME, SOFTWARE THAT  
17      WOULD RUN ON IPHONES AND IPADS.

18               SO WE HAD LAUNCHED IOS 5 AND HAD A NUMBER OF NEW  
19      CAPABILITIES.  WE INTRODUCED ICLOUD WITH THAT, ONE OF OUR  
20      INTERNET SERVICES BUILT INTO THE OPERATING SYSTEM.

21               WE INTRODUCED IMESSAGE, COMMUNICATIONS IN IOS, AND  
22      WIRELESS SYNCING WAS ONE OF THE BIG FEATURES THAT WAS PART OF  
23      THAT.

24               WE WERE ALSO AT THAT TIME WORKING ON THE NEXT IPHONE THAT  
25      WOULD COME OUT JUST SHORTLY AFTER, IN SEPTEMBER.  SO WE WERE

1 DEEPLY INVOLVED IN THAT, AND THAT WOULD BE THE IPHONE 4S,  
2 WHICH, AMONG OTHER CAPABILITIES, BROUGHT TO MARKET SIRI AS PART  
3 OF THAT, THAT'S OUR INTELLIGENT DIGITAL ASSISTANT.

4 AND CERTAINLY I THINK WHAT'S RELEVANT TO THIS DISCUSSION,  
5 WE WERE CLEARLY IN AN EXTREMELY COMPETITIVE ENVIRONMENT WITH  
6 SAMSUNG AT THE TIME AND THERE WAS A LOT GOING ON RELATIVE TO  
7 THAT.

8 Q. ACTUALLY, THAT'S WHAT I NOW WANT YOU TO FOCUS ON.

9 CAN YOU DESCRIBE FOR US IN SOME DETAIL WHAT APPLE'S  
10 COMPETITIVE VIEW OF SAMSUNG WAS IN AND AROUND AUGUST OF 2011?

11 A. WELL, AS I HAD STATED EARLIER, I ALREADY HAD EXPERIENCED  
12 THE SHOCK OF SEEING SAMSUNG START TO COPY SOME OF OUR PRODUCTS  
13 AND WAS WELL AWARE THAT THEY HAD A STRATEGY TO COME AFTER  
14 APPLE, BOTH NOT ONLY IN PRODUCTS, BUT IN THEIR MARKETING.

15 AND IT'S CERTAINLY NOT A COMPANY THAT I WOULD SAY WE HAD,  
16 AT LEAST I WAS AWARE OF A FRIENDLY RELATIONSHIP WITH, THIS  
17 COMPANY THAT WAS COMING AFTER YOUR PRODUCTS AND YOUR CUSTOMERS  
18 AND STATED SO MUCH AS THAT.

19 IT WASN'T A GOOD RELATIONSHIP, AND WE SAW IT GROWING AS A  
20 VERY COMPETITIVE ENVIRONMENT BETWEEN THE TWO COMPANIES.

21 Q. HAD THERE BEEN DISCUSSIONS ABOUT LICENSING THE FIVE  
22 PATENTS AT ISSUE IN THIS CASE IN AUGUST OF 2011, WOULD THOSE  
23 FACTORS HAVE PLAYED A ROLE IN APPLE'S DECISION MAKING?

24 A. I --

25 MR. PRICE: YOUR HONOR, I'M GOING TO OBJECT. LACK OF

1 FOUNDATION. THIS IS EXPERT TESTIMONY, AND IT'S BEEN  
2 UNDISCLOSED.

3 MR. MCELHINNY: THIS WAS WHAT WAS GOING ON IN APPLE'S  
4 EXECUTIVES HEADS, YOUR HONOR. THEY HAD A MARKETING.

5 MR. PRICE: ON A HYPOTHETICAL?

6 THE COURT: I'LL ALLOW ONE LIMITED QUESTION AND THEN  
7 YOU NEED TO MOVE ON.

8 MR. MCELHINNY: I WILL, YOUR HONOR.

9 CAN I ASK YOU TO REPEAT THE QUESTION, PLEASE, SO THAT I'VE  
10 GOT IT?

11 (RECORD READ.)

12 THE WITNESS: YES, THEY WOULD, VERY MUCH SO.

13 BY MR. MCELHINNY:

14 Q. SIR, HAS SAMSUNG'S INFRINGEMENT OF APPLE'S PATENTS HARMED  
15 APPLE IN THE MARKETPLACE?

16 A. I BELIEVE SO.

17 Q. AND IN WHAT WAYS?

18 MR. PRICE: OBJECTION, YOUR HONOR. CALLS FOR EXPERT  
19 OPINION, UNDISCLOSED.

20 MR. MCELHINNY: THIS IS THE NATURE -- THIS IS THE  
21 FACT OF INJURY. THIS IS BASIC PERCIPIENT WITNESS TESTIMONY.

22 THE COURT: OVERRULED.

23 GO AHEAD, PLEASE.

24 BY MR. MCELHINNY:

25 Q. LET ME ASK YOU THE QUESTION AGAIN. HAS SAMSUNG'S

1 INFRINGEMENT HARMED APPLE IN THE MARKETPLACE?

2 A. YES, I BELIEVE SO.

3 MR. PRICE: YOUR HONOR, I'M GOING TO ALSO OBJECT IT  
4 ASSUMES FACTS NOT IN EVIDENCE AT THIS POINT. THERE'S BEEN NO  
5 TESTIMONY COMPARING THESE PATENTS TO WHAT'S IN THESE PRODUCTS  
6 EXCEPT FOR YOUR ONE RULING.

7 THE COURT: OVERRULED.

8 GO AHEAD, PLEASE.

9 BY MR. MCELHINNY:

10 Q. DO YOU HAVE THE QUESTION IN MIND?

11 A. YES.

12 Q. OKAY. COULD YOU ANSWER IT? I THINK YOU CAN ANSWER IT  
13 THIS TIME. GO AHEAD.

14 A. I BELIEVE IT HAS CAUSED DAMAGE FOR APPLE IN THE  
15 MARKETPLACE. IT HAS CAUSED PEOPLE TO QUESTION SOME OF THE  
16 INNOVATIONS THAT WE'VE CREATED AND APPLE'S ROLE AS THE  
17 INNOVATOR.

18 I THINK IT HAS CONFUSED PEOPLE AS TO WHICH PRODUCTS ARE,  
19 ARE CREATING THIS EXPERIENCE AS THE MOST EASY TO USE AND WILL  
20 BEST SERVE CUSTOMER'S NEEDS, AND I THINK THAT CHALLENGE IS MADE  
21 HARDER BY THE COPYING AND THAT HURTS APPLE IN THOSE EFFORTS.

22 Q. THERE WAS A SUGGESTION IN ONE OF THE OPENING ARGUMENTS  
23 TODAY THAT APPLE WAS OPPOSED TO FAIR COMPETITION IN THE  
24 MARKETPLACE.

25 IS THAT TRUE?



1 A. NOT AT ALL.

2 Q. WHAT IS APPLE'S VIEW ABOUT FAIR COMPETITION IN THE  
3 MARKETPLACE?

4 A. WELL, COMPETITION IS GREAT. COMPETITION PUSHES US ALL TO  
5 MAKE BETTER PRODUCTS. IT HELPS THE CUSTOMER. THEY BENEFIT BY  
6 COMPANIES COMPETING WITH EACH OTHER TO MAKE BETTER PRODUCTS AND  
7 OFFER, OFFER THINGS TO THEM.

8 BUT THE WAY IN WHICH THAT COMPETITION HAPPENS MATTERS.  
9 COMPANIES NEED TO CREATE NEW PRODUCTS, THINK OF NEW IDEAS,  
10 SOLVE PROBLEMS IN NEW WAYS. THAT IS HOW THE CUSTOMER BENEFITS.  
11 AND THAT'S HOW WE ALL COMPETE WITH EACH OTHER. I THINK  
12 COMPETITION IS A GREAT THING WHEN DONE WELL AND DONE TO THE  
13 BENEFIT OF THE CUSTOMER.

14 MR. MCELHINNY: I HAVE NOTHING FURTHER, YOUR HONOR.

15 THE COURT: ALL RIGHT. THE TIME IS NOW 4:03.

16 MR. PRICE: MAY WE HAVE A MINUTE TO SET UP?

17 THE COURT: SURE, I'LL GIVE YOU TIME TO SET UP.

18 (PAUSE IN PROCEEDINGS.)

19 MR. PRICE: YOUR HONOR?

20 THE COURT: ALL RIGHT. ARE YOU READY. TIME IS NOW  
21 4:04. GO AHEAD, PLEASE.

22 MR. PRICE: THANK YOU, YOUR HONOR.

23 **CROSS-EXAMINATION**

24 BY MR. PRICE:

25 Q. MR. SCHILLER, WE WERE JUST TALKING ABOUT COMPETITION, AND

1 I BELIEVE THAT IT HAS BEEN YOUR TESTIMONY THAT WHEN YOU WERE AT  
2 APPLE AND APPLE CAME OUT IN 2007 WITH THAT IPHONE, YOU EXPECTED  
3 THAT IN THE FUTURE, THERE WOULD BE OTHER SMARTPHONE COMPANIES.  
4 CORRECT?

5 A. YES.

6 Q. AND IT WAS YOUR OBSERVATION THAT, YOU KNOW, THAT COMPANIES  
7 TENDED TO FOLLOW TRENDS WITHIN THE SMARTPHONE INDUSTRY. YOU  
8 HAD OBSERVED THAT?

9 A. I'M NOT SURE WHAT YOU MEAN BY "TRENDS."

10 Q. LIKE FOR A WHILE THERE WERE THESE FLIP PHONES, YOU KNOW.  
11 THERE WERE, YEAR TO YEAR, THINGS IN THE MARKET THAT, THAT  
12 MANUFACTURERS OFFERED THAT MIGHT BE SIMILAR.

13 A. YES, THAT DID HAPPEN WITH THE FLIP PHONES.

14 I'M NOT SURE ABOUT THE QUESTION WITH SMARTPHONES WHAT YOU  
15 MEAN.

16 Q. WELL, YOU CERTAINLY EXPECTED COMPETITION IN THE SMARTPHONE  
17 MARKET; CORRECT?

18 A. YES.

19 Q. AND YOU KNEW THAT OTHER COMPANIES WERE ALLOWED TO COMPETE  
20 WITH APPLE IN THE SMARTPHONE MARKET AS LONG AS THOSE COMPANIES  
21 DIDN'T DO THINGS THAT APPLE ITSELF HAD THE SOLE RIGHT TO DO;  
22 CORRECT?

23 A. I'M NOT SURE IF YOU'RE ASKING A LEGAL QUESTION ABOUT WHAT  
24 PEOPLE HAVE, COMPANIES HAVE THE RIGHTS TO DO AND NOT DO. I  
25 PREFER NOT TO RESPOND AS A LAWYER.

1 I JUST KNOW GENERALLY AS A MARKETER WHAT, WHAT IS GOOD  
2 COMPETITION AND -- BUT I SHOULDN'T SPEAK ON A LEGAL BASIS.

3 Q. WELL, I DON'T WANT YOU TO SPEAK ON A LEGAL BASIS, BUT I  
4 THINK YOUR ATTORNEY ASKED YOU SOME QUESTIONS ABOUT WHETHER YOU  
5 WERE FAMILIAR WITH THE PATENTS IN THIS CASE.

6 DO YOU RECALL THAT?

7 A. YES, AND I AM GENERALLY FAMILIAR WITH THE FIVE PATENTS.

8 Q. AND WHAT PATENTS DO IS THEY GIVE A COMPANY THE SOLE RIGHT  
9 TO DO A PARTICULAR THING; CORRECT?

10 A. I BELIEVE SO.

11 Q. AND SO TO FIND OUT WHETHER OR NOT SOMEONE IS DOING  
12 SOMETHING YOU HAVE THE SOLE RIGHT TO DO, YOU REALLY HAVE TO  
13 LOOK AT THE LANGUAGE OF THE PARTICULAR PATENT CLAIM; CORRECT?

14 A. I -- AGAIN, I'M NOT AN EXPERT ON THE DIFFERENCE BETWEEN  
15 CLAIMS IN A PATENT. I THINK THAT'S A LEVEL OF DETAIL THAT'S  
16 BETTER ANSWERED BY A LAWYER IF WE'RE GOING TO GET INTO WHAT  
17 CLAIMS MEAN.

18 Q. OKAY. WELL, SO I GUESS WHAT YOU'RE TELLING ME IS THAT, IS  
19 THAT YOU'RE NOT REALLY IN A POSITION TO SAY, YOU KNOW, WHETHER  
20 OR NOT SAMSUNG CAN USE A PARTICULAR METHOD, FOR EXAMPLE, FOR  
21 WORD SUGGESTION OR A PARTICULAR METHOD FOR SLIDE TO UNLOCK  
22 BECAUSE YOU'RE NOT A LAWYER AND HAVEN'T REALLY COME TO TERMS  
23 WITH THOSE CLAIMS IN THAT DETAIL; CORRECT?

24 A. YES, I'M NOT A LAWYER AND I SHOULDN'T SAY WHETHER SPECIFIC  
25 IMPLEMENTATION OF A PATENT IS LEGAL OR NOT. THAT'S FOR OTHERS

1 TO SAY.

2 Q. AND SO YOU MENTIONED, FOR EXAMPLE, THAT APPLE CAME OUT --  
3 THAT PHONE IN 2007, WHICH WE HEARD ALL THE APPLAUSE FOR ON THE  
4 VIDEO EARLIER, THAT APPLE MADE AN EASY TO USE SMARTPHONE;  
5 CORRECT?

6 A. YES, WE SURE DID.

7 Q. AND YOU UNDERSTAND THAT OTHER COMPANIES WERE ALLOWED TO  
8 COMPETE WITH APPLE TO MAKE SMARTPHONES THAT WERE EASY TO USE AS  
9 LONG AS -- AS LONG AS THEY WEREN'T USING APPLE'S PATENTED WAY  
10 OF DOING IT; THAT IS, USING WAYS THAT ONLY APPLE HAD THE RIGHT  
11 TO DO; CORRECT?

12 A. I BELIEVE SO.

13 Q. OKAY. AND SO IF YOU'RE LOOKING AT WHETHER OR NOT -- LET  
14 ME STEP BACK AGAIN.

15 SO IT WASN'T YOUR VIEW THAT, THAT, FOR EXAMPLE, ANDROID,  
16 WHICH YOU UNDERSTAND WAS CREATED BY GOOGLE; CORRECT?

17 A. YES.

18 Q. SO IT WASN'T YOUR UNDERSTANDING THAT GOOGLE, IN CREATING  
19 AN ANDROID OPERATING SYSTEM, HAD TO COME UP WITH SOMETHING HARD  
20 TO USE.

21 MR. MCELHINNY: BEYOND THE SCOPE, YOUR HONOR. I  
22 DIDN'T MENTION THE WORD "GOOGLE" ONCE IN MY EXAMINATION.

23 MR. PRICE: HE SAID --

24 THE COURT: OVERRULED.

25 GO AHEAD. YOU MAY ANSWER.

1 THE WITNESS: I'M SORRY. COULD I HAVE THE QUESTION  
2 AGAIN.

3 MR. PRICE: SURE.

4 Q. LET ME JUST CHECK SOMETHING. DIDN'T YOU TALK ABOUT EASE  
5 OF USE FOR ANDROID. DIDN'T YOU COMMENT ABOUT EASE OF USE FOR  
6 ANDROID?

7 A. IN THE CHART, YES.

8 Q. AND YOU LOOKED AT SURVEYS CONCERNING THE USE OF USE FOR  
9 ANDROID; RIGHT?

10 A. YES.

11 Q. AND YOUR UNDERSTANDING IS THAT ANDROID IS CREATED BY  
12 GOOGLE; CORRECT?

13 A. YES.

14 Q. SO I JUST WANT TO MAKE SURE, IT'S NOT YOUR TESTIMONY THAT  
15 JUST BECAUSE APPLE CAME OUT WITH THIS REMARKABLE PHONE IN 2007,  
16 THAT GOOGLE, IN COMPETING, HAD TO COME OUT WITH SOMETHING HARD  
17 TO USE.

18 A. NO.

19 Q. I MEAN, GOOGLE WAS ALLOWED TO DEVELOP SOFTWARE THAT WAS  
20 EASY TO USE SO LONG AS IT DID NOT VIOLATE APPLE'S RIGHTS;  
21 CORRECT?

22 MR. MCELHINNY: OBJECTION. RELEVANCE, YOUR HONOR.  
23 GOOGLE IS NOT A PLAYER IN THIS CASE. THEY'RE NOT A DEFENDANT.  
24 THE QUESTION HAS BEEN ABOUT SAMSUNG.

25 THE COURT: OVERRULED.

1 GO AHEAD, PLEASE.

2 THE WITNESS: I'M SORRY. COULD I HAVE THE QUESTION  
3 AGAIN, PLEASE.

4 BY MR. PRICE:

5 Q. SURE. GOOGLE COULD DEVELOP ANDROID SOFTWARE THAT WAS EASY  
6 TO USE THAT COMPETED WITH APPLE SO LONG AS IT DIDN'T DO IT IN A  
7 WAY THAT VIOLATED APPLE'S RIGHTS; CORRECT?

8 A. I BELIEVE SO.

9 Q. OKAY. SO LET'S GO BACK THEN TO, TO, IF I CAN, TO THAT  
10 2007 TIMEFRAME WHEN WE WERE LOOKING -- WE SAW ALL THOSE REVIEWS  
11 OF THE IPHONE -- THAT FIRST IPHONE.

12 AND THERE WAS A LOT OF DEMAND FOR THAT IPHONE; CORRECT?

13 A. YES, THERE WAS.

14 Q. OKAY. NOW, WE KNOW, HOWEVER, THAT THE PATENTS THAT ARE  
15 ACCUSED -- THAT ARE BEING ASSERTED IN THIS CASE, THE PATENT  
16 CLAIMS, AT LEAST FOUR OF FIVE OF THEM HAD NOTHING TO DO WITH  
17 THE DEMAND FOR THAT FIRST IPHONE; CORRECT?

18 MR. MCELHINNY: EXCUSE ME, YOUR HONOR. MAY WE  
19 APPROACH? THERE IS A LIMITATION ON WHAT WE'RE ALLOWED TO  
20 ASSERT IN THIS CASE, BUT THE WITNESS HAS TO ANSWER QUESTIONS  
21 HONESTLY IF THEY'RE ASKED IN THAT FORM.

22 THE COURT: GIVE ME ONE MINUTE, PLEASE.

23 MR. MCELHINNY: THANK YOU, YOUR HONOR.

24 (PAUSE IN PROCEEDINGS.)

25 THE COURT: YOU MAY ANSWER.

1 BY MR. QUINN:

2 Q. DO YOU REMEMBER THE QUESTION?

3 A. YES. YOU ASKED ABOUT WHETHER PATENTS IN THE IPHONE WERE A  
4 PART OF WHAT CREATED DEMAND IN THE BEGINNING. IS THAT CORRECT?

5 Q. NO, THAT'S NOT MY QUESTION.

6 MY QUESTION WAS THAT THE PATENT CLAIMS THAT YOU ARE  
7 ASSERTING, THAT APPLE IS ASSERTING IN THIS CASE, THAT THOSE  
8 CLAIMS HAD NOTHING TO DO WITH THE DEMAND FOR THAT IPHONE IN  
9 2007 BECAUSE THAT IPHONE DID NOT PRACTICE FOUR OF THOSE FIVE  
10 CLAIMS?

11 A. I'M -- I'M FAMILIAR WITH THE PATENTS, NOT THE INDIVIDUAL  
12 CLAIMS ON THE PATENTS THAT YOU'RE DISCUSSING HERE THAT ARE  
13 ASSERTED.

14 SO IF YOU WANT TO TALK MORE BROADLY ABOUT THE PATENTS,  
15 WHICH I'M NOT SUGGESTING, THAT'S THE AREA I KNOW.

16 INDIVIDUAL ASSERTIONS OF CLAIMS I THINK IS FOR OTHERS TO  
17 SPEAK TO.

18 Q. OKAY. SO WHAT YOU'RE TELLING US IS THAT YOU PERSONALLY  
19 AREN'T FAMILIAR WITH THE ACTUAL PATENT CLAIMS THAT APPLE IS  
20 ASSERTING IN THIS CASE THAT SAMSUNG HAS INFRINGED IN ITS  
21 PHONES? IS THAT WHAT YOU'RE SAYING?

22 A. THE ASSERTION OF THE PATENT CLAIMS ARE NOT MY AREA OF  
23 EXPERTISE, NO.

24 Q. AND SO WHEN YOU WERE SAYING, TALKING ABOUT THE EFFECT  
25 OF -- I'M GOING TO TRY TO GET THE WORDS -- YOU WERE TALKING

1 ABOUT THE EFFECT OF COPYING OF THE IPHONE -- DO YOU RECALL THAT  
2 IN THE LAST PART OF YOUR TESTIMONY? CORRECT?

3 A. YES.

4 Q. OKAY. SO WHEN YOU WERE TALKING ABOUT THAT EFFECT, YOU  
5 WEREN'T TALKING ABOUT THE EFFECT OF ANYONE USING THE PARTICULAR  
6 CLAIMS THAT ARE ASSERTED IN THIS CASE BECAUSE YOU DON'T EVEN  
7 KNOW WHAT THOSE CLAIMS ARE?

8 A. I WAS TALKING ABOUT THE TOTALITY OF ALL OF THE COPYING,  
9 WHICH INCLUDE MANY THINGS, AND NOT ABOUT ANY SPECIFIC CLAIM  
10 ASSERTION.

11 Q. AND YOU UNDERSTAND THAT THIS CASE THAT THE JURY IS TO  
12 DECIDE IS ABOUT A SPECIFIC NUMBER OF PRODUCTS AND SPECIFIC -- I  
13 THINK FIVE SPECIFIC CLAIMS? DO YOU UNDERSTAND THAT MUCH?

14 A. YES.

15 Q. OKAY. AND SO LET'S TALK ABOUT THAT 2007 IPHONE WHICH  
16 THERE WAS ALL THIS EXCITEMENT ABOUT.

17 NOW, IT -- I GUESS IT DOESN'T HAVE A -- IT DOESN'T HAVE A  
18 FORWARD FACING CAMERA SO YOU COULDN'T DO A SELFIE LIKE  
19 ELLEN DEGENERES DID IN THE OSCARS; RIGHT?

20 A. I'M SORRY. WOULD ELLEN DEGENERES USE -- AGAIN, I WASN'T  
21 INVOLVED IN THAT, SO I'M NOT SURE WHAT EXACTLY SHE USED. SO  
22 MAYBE YOU CAN TELL ME.

23 Q. YOU DIDN'T WATCH THE OSCARS?

24 A. NO, I DIDN'T. I WAS TRAVELLING THAT NIGHT UNFORTUNATELY.

25 Q. AH. WELL, IN ANY EVENT, THAT FIRST IPHONE THAT WE WERE



1 TALKING ABOUT CAME OUT IN 2007. THERE WAS NO APP STORE AT THAT  
2 TIME; CORRECT?

3 A. NO. THE APP STORE CAME A YEAR LATER.

4 Q. AND THERE WAS NO VIDEO; CORRECT?

5 A. WELL, IT PLAYED VIDEOS, YES.

6 Q. COULD IT TAKE VIDEOS?

7 A. IT DID NOT HAVE A VIDEO CAMERA, NO.

8 Q. I APOLOGIZE FOR BEING A LITTLE BIT UNCLEAR THERE.

9 IT DIDN'T HAVE 3G; CORRECT?

10 A. CORRECT. IT WAS AT&T EDGE NETWORKING WAS THE NETWORK THAT  
11 WAS USED.

12 Q. AND THAT'S -- IS THAT SLOWER THAN 3G GENERALLY?

13 A. DEPENDS. IT'S VERY COMPLICATED. IT CAN BE. IT DOESN'T  
14 HAVE TO BE AT THE TIME.

15 Q. SO STILL PRETTY REMARKABLE PRODUCT, ELECTRIFYING? YOU  
16 AGREE?

17 A. I THINK SO, THANKS. YES.

18 Q. SO IF WE LOOK AT THAT PRODUCT -- I WANT TO LOOK, IF WE  
19 COULD, AT A SERIES OF PRODUCTS. I WANT TO LOOK AT THE BINDER  
20 IN FRONT OF YOU -- NOT THE GREEN ONE. THE GREEN ONE IS YOUR  
21 DEPOSITION TESTIMONY.

22 I WANT TO LOOK AT THE OTHER ONE, AND TOWARD THE END THERE  
23 ARE SOME DEMONSTRATIVES, COLORED PICTURES OF PHONES. IT'S SDX  
24 2312.

25 AND MAYBE YOU CAN TELL ME -- HAVE YOU FOUND IT? I'VE GOT

1 IT UP HERE ON THE SCREEN.

2 A. NO. I'VE GOT 2310. THEY DON'T --

3 Q. THEY KEEP GOING RIGHT AFTER THAT.

4 A. I DON'T HAVE ANOTHER TAB AFTER THAT.

5 Q. THEY'RE ALL BEHIND THAT TAB.

6 A. THERE IS NO TAB 2312.

7 Q. I MEAN THERE ARE THREE PAGES AFTER THAT.

8 AND IF IT'S EASIER, I THINK IT MIGHT BE ON YOUR MONITOR.

9 A. I SEE THIS, YES.

10 Q. AND THIS IS A DEMONSTRATIVE SO I JUST WANT TO GO THROUGH.

11 SO IN JUNE 2007 WHEN YOU CAME OUT WITH THE ORIGINAL  
12 IPHONE, ISN'T IT TRUE THAT THAT IPHONE DID NOT USE THE WORD  
13 RECOMMENDATION METHODOLOGY THAT'S SET FORTH IN APPLE'S PATENT  
14 172, CLAIM 18, THAT APPLE IS SUING ON TODAY?

15 MR. MCELHINNY: LACKS FOUNDATION. IT'S BEYOND THE  
16 SCOPE. IT'S ASKED AND ANSWERED.

17 THE COURT: THAT'S SUSTAINED.

18 BY MR. PRICE:

19 Q. WELL, LET ME ASK YOU IF YOU KNOW, OKAY? DO YOU KNOW  
20 WHETHER OR NOT THAT FIRST IPHONE PRACTICED THE APPLE PATENT  
21 '172, CLAIM 18 THAT'S BEING FILED IN THIS CASE?

22 MR. MCELHINNY: SAME OBJECTION, YOUR HONOR.

23 MR. PRICE: I ASKED HIM IF HE KNOWS.

24 THE COURT: IT HAS BEEN ASKED AND ANSWERED, BUT I'LL  
25 ALLOW HIM TO GO AHEAD.

1 THE WITNESS: NO, I'M NOT AN EXPERT ON THE  
2 PROGRAMMING OF THE INDIVIDUAL CLAIMS AND THE ASSERTIONS. SO I  
3 WOULDN'T KNOW.

4 BY MR. PRICE:

5 Q. OKAY. SO I'M GOING TO TRY TO SHORTEN THIS THEN. SO IF I  
6 WENT THROUGH EVERY ONE OF THESE APPLE PHONES FROM THE ORIGINAL  
7 IPHONE UP TO THE 5, IF I WENT THROUGH THOSE AND ASKED YOU  
8 WHETHER OR NOT ANY OF THOSE PHONES PRACTICED ANY OF THE  
9 SPECIFIC CLAIMS IN THIS CASE, WOULD YOU KNOW THE ANSWER TO  
10 THAT?

11 A. NO. I'M NOT THE ONE TO ASK ABOUT ASSERTED CLAIMS WITHIN  
12 THE PATENTS. THAT'S NOT MY AREA OF EXPERTISE.

13 Q. OKAY. SO IN ALL THOSE REVIEWS THAT THE JURY SAW ABOUT  
14 THIS WONDERFUL, INNOVATIVE DEVICE, THE INVENTION OF THE YEAR,  
15 YOU KNOW, YOU CAN'T TELL US WHETHER OR NOT THOSE REVIEWERS  
16 ACTUALLY OBSERVED, YOU KNOW, OR SAW, YOU KNOW, ANY  
17 IMPLEMENTATION OF THE SPECIFIC PATENT CLAIMS THAT ARE ASSERTED  
18 IN THIS CASE?

19 MR. MCELHINNY: OBJECTION, YOUR HONOR.

20 THE COURT: I DIDN'T HEAR THE OBJECTION. WHAT IS IT?

21 MR. MCELHINNY: WE'RE STILL TALKING ABOUT SPECIFIC  
22 CLAIMS. HE'S SAID NOW 18 TIMES.

23 THE COURT: ALL RIGHT. OVERRULED.

24 GO AHEAD. YOU MAY ANSWER.

25 THE WITNESS: I CAN'T SAY EITHER WAY. THEY MAY HAVE.

1       THEY MAY NOT HAVE SINCE I DON'T HAVE DEEP KNOWLEDGE OF ASSERTED  
2       CLAIMS.

3       BY MR. PRICE:

4       Q.     OKAY.  NOW, YOU HAD TALKED A LITTLE BIT ABOUT -- LET ME  
5       ASK YOU THIS:  WITH RESPECT TO THE TYPES OF FEATURES THAT  
6       YOU'RE SO PROUD OF THAT APPLE HAS, IF YOU TOOK AWAY A SPECIFIC  
7       EASE OF USE FEATURE, WOULD THAT AFFECT, DO YOU BELIEVE, THE  
8       SALES OF AN APPLE IPHONE?

9       A.     HYPOTHETICALLY, YES.  I THINK EASE OF USE IS IMPORTANT AND  
10      WE HAVE A LOT OF THINGS THAT ADD UP TO EASE OF USE.

11            BUT DEPENDING ON WHAT THEY ARE AND WHAT THE USER'S  
12      EXPERIENCE IS, IT COULD IMPACT SALES.

13      Q.     WELL, I'M ASKING YOU, DO YOU GENERALLY THINK -- IN FACT,  
14      LET ME STEP BACK A BIT FURTHER FROM THAT.

15            WITH RESPECT TO EASE OF USE, YOU HAVE ASKED YOUR CUSTOMERS  
16      TO CHECK WHETHER OR NOT EASE OF USE IS IMPORTANT; CORRECT?

17      A.     YES, WE ASKED QUESTIONS ABOUT THAT.

18      Q.     AND IN THOSE SURVEYS, YOU DON'T DEFINE EASE OF USE ANY  
19      FURTHER THAN EASE OF USE; CORRECT?

20      A.     CORRECT.

21      Q.     AND YOU -- IN YOUR SURVEYS, DO YOU ASK CUSTOMERS TO  
22      COMPARE WHETHER ONE WAY OF DOING, SAY, A WORD RECOMMENDATION AS  
23      YOU'RE TYPING IS EASIER TO USE THAN ANOTHER WAY OF DOING A WORD  
24      CORRECTION?

25      A.     NO, I DON'T RECALL ASKING THAT QUESTION EVER.

1 Q. OKAY. HOW ABOUT SYNCING? WE'VE HEARD THAT WORD SYNCING  
2 USED BEFORE, AND I THINK YOU SAID ACTUALLY THAT IT WAS IN 2011  
3 WHEN -- AUGUST OF 2011 THAT APPLE WAS FIRST COMING OUT WITH  
4 INTRODUCING WIRELESS SYNCING THROUGH THE CLOUD.

5 A. NOT THROUGH THE CLOUD, BUT WIRELESS SYNCING, YES, IN IOS  
6 5.

7 Q. OKAY. SO IF WE CAN -- KEN, IF WE CAN PUT THAT BACK UP,  
8 SLIDE 2312 -- AND SO SOMEWHERE AROUND BETWEEN THE 4 AND 4S THAT  
9 APPLE, FOR THE FIRST TIME, CAME OUT WITH THIS WIRELESS SYNCING?

10 A. YES. WE HAD WIRED SYNCING BEFORE YOU COULD DO OVER A  
11 CABLE, AND NOW YOU COULD DO IT WIRELESSLY.

12 AND IT'S NOT LIMITED BY MODEL. YOU COULD DO THAT -- YOU  
13 COULD OPERATE THE OPERATING SYSTEM ON SOME PREVIOUS DEVICES AND  
14 DO THAT AS WELL.

15 Q. YOU COULD DOWNLOAD THAT SOFTWARE?

16 A. YES.

17 Q. OKAY. AND SO, FOR EXAMPLE, I MEAN, THERE HAD BEEN A  
18 COMMENT IN OPENING THAT BEFORE APPLE, YOU HAD TO PLUG IN  
19 DEVICES IN ORDER TO SYNC YOUR DEVICES.

20 THAT'S NOT TRUE, IS IT?

21 A. I'M SORRY. I DON'T KNOW WHAT THAT COMMENT IS AND WHAT IT  
22 WAS REFERRING TO. I WOULDN'T WANT TO RESPOND TO WHAT SOMEONE  
23 ELSE SAID OUT OF CONTEXT.

24 Q. OKAY. WELL, AS SOMEONE WHO'S HEAD OF MARKETING, YOU HAD  
25 SOME KIND OF A RESPONSIBILITY TO KNOW WHAT WAS IN THE MARKET.

1 A. IT DEPENDS ON THE SITUATION AND WHAT WE'RE TALKING ABOUT.

2 I'M SORRY. THAT'S A VERY BROAD STATEMENT.

3 Q. OKAY. YOU HAD THE -- YOU WANTED TO KNOW WHAT YOUR  
4 COMPETITORS WERE DOING, PEOPLE LIKE GOOGLE OR MOTOROLA OR HTC?

5 A. SOMETIMES YES, SOMETIMES NO.

6 Q. OKAY. AND SO I'M JUST ASKING YOU, AUGUST -- I'M SORRY. I  
7 WANT TO GET IT RIGHT HERE. SO AUGUST 2011, PRIOR TO THEN,  
8 DIDN'T ONE OF YOUR COMPETITORS ALREADY HAVE WIRELESS SYNCING?

9 A. I DON'T KNOW.

10 Q. ONE WAY OR THE OTHER?

11 A. I DON'T KNOW EITHER WAY.

12 Q. OKAY. IN ANY EVENT, DO YOU KNOW HOW THE ANDROID SYSTEM  
13 DOES BACKGROUND SYNCING?

14 A. NO, I'M NOT FAMILIAR WITH THAT.

15 Q. DO YOU KNOW WHAT BACKGROUND SYNCING IS?

16 A. I CAN MAKE A GUESS TO THE TERMINOLOGY. I DON'T KNOW THE  
17 SPECIFICS OF WHAT THE IMPLEMENTATION IS. I WOULD BE JUST  
18 MAKING UP A GUESS IF YOU ASKED ME TO RESPOND TO THAT.

19 Q. I DON'T WANT YOU TO GUESS.

20 A. OKAY.

21 Q. NOW, WHEN YOU USED THE PHRASE "EASE OF USE" IN YOUR  
22 SURVEYS, I THINK YOU TESTIFIED THAT THAT, THAT TERM REFERS TO  
23 HUNDREDS OF FEATURES.

24 A. YES, IT DOES.

25 Q. AND THAT YOU'VE SAID THAT YOU PERSONALLY COULDN'T RANK

1       THOSE HUNDREDS OF FEATURES AS TO EASE OF USE?

2       A.    NO, I DON'T BELIEVE I COULD.

3       Q.    AND CERTAINLY AS OF JULY 2013, YOU WEREN'T AWARE OF  
4       ANYBODY AT APPLE WHO HAD DONE ANY KIND OF RANKING AS TO THESE  
5       HUNDREDS OF FEATURES OF EASE OF USE?

6       A.    I'M NOT AWARE THAT WE DID THAT, NO.

7       Q.    AND I ASKED YOU WHETHER OR NOT, IF YOU TAKE OUT -- IF YOU  
8       TOOK OUT ONE OF THOSE HUNDREDS OF FEATURES OF EASE OF USE,  
9       WHETHER IT WOULD AFFECT APPLE'S SALES.

10       I BELIEVE YOU SAID THAT IT VERY WELL COULD.

11       A.    IT'S POSSIBLE. I DON'T KNOW. WE'RE SPEAKING VERY  
12       HYPOTHETICALLY ABOUT VAGUE TOPICS.

13       Q.    WELL, YOU'D WANT TO ACTUALLY LOOK INTO THAT TO SEE WHETHER  
14       OR NOT THAT WOULD ACTUALLY AFFECT SALES; CORRECT?

15       A.    AGAIN, I DON'T KNOW WHAT WE'RE TALKING ABOUT REALLY HERE,  
16       SO MAYBE YOU CAN HELP ME BE MORE SPECIFIC.

17       Q.    OKAY. I'LL TRY TO BE SPECIFIC.

18       EASE OF USE, HUNDREDS OF FEATURES. IF YOU TAKE OUT ONE,  
19       COULD YOU ASSUME THAT THAT'S GOING TO IMPACT APPLE'S SALES?

20       A.    IT'S POSSIBLE. I'LL GIVE YOU A SIMPLE FOR INSTANCE.

21       IF I TOOK OUT THE EASE WITH WHICH YOU CAN SIMPLY MAKE A  
22       PHONE CALL WITH A PHONE, YOU MIGHT NOT WANT TO BUY THAT PHONE  
23       BECAUSE IT'S REALLY HARD TO DO THE ONE THING YOU REALLY NEED TO  
24       DO ALL THE TIME.

25       SO IT DEPENDS. WE WOULD HAVE TO TALK ABOUT THE SPECIFIC

1 SITUATION.

2 Q. OKAY. SO YOU CAN'T USE BROAD CATEGORIES OF EASE OF USE TO  
3 DETERMINE WHETHER OR NOT, IF YOU HAVE ONE FEATURE VERSUS  
4 ANOTHER, WHETHER IT'S GOING TO IMPACT SALES. YOU NEED TO LOOK  
5 AT THE SPECIFIC FEATURE AND ITS IMPACT ON CONSUMERS; CORRECT?

6 A. AGAIN, I DON'T NEED TO. I DO MY JOB IN MARKETING. I'M  
7 TRYING TO HELP YOU ANSWER YOUR QUESTION, AND IT'S NOT SOMETHING  
8 I'VE HAD TO LOOK AT AND HAD TO STUDY.

9 EASE OF USE IS INCREDIBLY IMPORTANT, ONE OF THE MOST  
10 IMPORTANT THINGS IN OUR PRODUCT.

11 BUT I'VE NEVER HAD TO PICK IT APART MYSELF IN MARKETING  
12 AND SEGREGATE OUT DIFFERENT FEATURES AND RANK NUMBER VALUE  
13 THEM. SO IT'S NOT SOMETHING I NORMALLY HAVE TO DO AND I THINK  
14 ABOUT.

15 Q. OKAY. SO LET ME ASK YOU THEN WHAT YOU HAVE LOOKED AT  
16 THAT -- I MEAN YOU AND YOUR MARKETING TEAM -- AS TO WHAT HELPS  
17 DRIVE SALES, OKAY --

18 A. SURE.

19 Q. -- OF APPLE PRODUCTS.

20 AND I THINK YOU WOULD PROBABLY AGREE WITH ME THAT YOU  
21 BELIEVE THAT THE APPLE IPHONES ARE THE EASIEST TO USE?

22 A. I BELIEVE SO.

23 Q. AND -- BUT YOU'VE -- IN LOOKING AT ONE OF THE SURVEYS IN  
24 YOUR DIRECT EXAMINATION WHICH CONCERNED THE USE OR THE FACT  
25 THAT THERE WERE NEW CONSUMERS BEING BROUGHT INTO THE MARKET.



1 DO YOU REMEMBER THAT?

2 A. YES.

3 Q. AND LET ME SEE IF I CAN CALL YOUR ATTENTION TO THAT. THAT  
4 WAS, I THINK, EXHIBIT 123-3.

5 IF WE CAN PUT THAT UP? THAT WAS A PX 123-3. THAT'S A  
6 PLAINTIFF'S EXHIBIT.

7 HERE WE GO. THIS IS THE ONE YOU WERE TALKING ABOUT IN THE  
8 PERCENTAGE OF FIRST-TIME SMARTPHONE BUYERS AND HOW IT HAD GROWN  
9 UP THROUGH FISCAL YEAR, AND WE WERE TALKING ABOUT THESE  
10 NUMBERS, 60 PERCENT, 47 PERCENT, ET CETERA; CORRECT?

11 A. YES.

12 Q. AND OBVIOUSLY -- AND I GUESS YOU WERE SAYING THAT A LOT OF  
13 PEOPLE BEFORE, YOU KNOW, THIS TIMEFRAME, WERE USING PHONES THAT  
14 WEREN'T SMARTPHONES.

15 A. CORRECT.

16 Q. IS THERE A TERM IN THE INDUSTRY FOR THOSE SORTS OF PHONES?

17 A. YES. WE CALL THEM FEATURE PHONES.

18 Q. AND YOU'VE GOT SOME EXPERTISE, YOU BELIEVE YOU HAVE A  
19 SIGNIFICANT AMOUNT OF EXPERTISE, AT LEAST YOU BELIEVE, IN DOING  
20 SURVEYS; CORRECT?

21 A. YES.

22 Q. YOU'VE DONE THEM MOST OF YOUR LIFE?

23 A. CERTAINLY SINCE COLLEGE, YES.

24 Q. OKAY. WHICH IS -- WELL, WHICH HAS BEEN MOST OF YOUR LIFE?

25 A. A VERY LONG TIME AGO.

1 (LAUGHTER.)

2 BY MR. PRICE:

3 Q. YEAH. AND THERE'S A GOOD WAY AND A BAD WAY TO DO A  
4 SURVEY? YOU AGREE WITH THAT?

5 ACTUALLY, BAD QUESTION.

6 THERE ARE GOOD AND BETTER WAYS TO DO SURVEYS; CORRECT?

7 A. OFTEN THAT'S TRUE.

8 Q. AND WHAT YOU FOUND IS THAT YOU LIKE ASKING QUESTIONS OF  
9 PEOPLE ABOUT WHAT DO YOU THINK, KIND OF OPEN-ENDED QUESTIONS,  
10 AND THEN TRY TO LEARN FROM THEM?

11 A. I'M SORRY. I THINK THAT'S TAKEN OUT OF CONTEXT.

12 I THINK YOU CAN ASK PEOPLE WHAT THEY THINK. I DON'T LIKE  
13 OPEN-ENDED QUESTIONS AS MUCH IN TERMS OF -- I MEAN, YOU CAN ASK  
14 THEM. IT'S NOT GOOD OR BAD.

15 BUT I THINK YOU GET A MORE DEFINITIVE, CLEAR RESULT IF  
16 THERE'S A SPECIFIC LIST OF THINGS TO PICK FROM.

17 I THINK WHEN YOU MADE THAT STATEMENT, I BELIEVE I WAS MORE  
18 REFERRING TO IT'S BETTER TO ASK PEOPLE, IN MY SURVEYS FOR  
19 MARKETING, ABOUT THINGS THEY HAVE A KNOWLEDGE OF, LIKE WHAT  
20 THEY THINK OF THEIR PHONE, VERSUS THINGS THAT THEY DON'T HAVE  
21 KNOWLEDGE OF.

22 BUT THAT'S IN MY MARKETING SURVEYS.

23 Q. SO LET ME FOLLOW UP THEN.

24 IN YOUR SURVEYS, YOU PREFER TO ASK PEOPLE THINGS WHAT THEY  
25 HAVE A KNOWLEDGE OF RATHER THAN GIVING THEM KNOWLEDGE AND THEN

1 ASKING THEM ABOUT IT?

2 A. ON THE WORK I DO, YES.

3 Q. I'M SORRY. I COULDN'T HEAR YOU.

4 A. YES. FOR THE WORK I DO, YES.

5 Q. AND, IN FACT, YOU SAID THAT, THAT YOU -- YOU DON'T TRY TO  
6 CREATE A SURVEY WHERE YOU ACTUALLY HAVE TO PUT SOMETHING IN  
7 THEIR HEAD TO THEN GET IT OUT?

8 A. I THINK THAT'S MORE DIFFICULT. IT CAN BE DONE. IT IS  
9 DONE. BUT I THINK IT'S A MORE DIFFICULT METHODOLOGY.

10 Q. AND YOU SAID THAT IF YOU USE THAT METHODOLOGY WHERE,  
11 INSTEAD OF ASKING SOMETHING THEY'RE ALREADY KNOWLEDGEABLE  
12 ABOUT, YOU HAVE TO TELL THEM ABOUT SOMETHING, YOU FIND THAT  
13 THAT DATA, IN YOUR EXPERIENCE, IS LESS RELIABLE.

14 A. IT DEPENDS ON THE QUESTION. IT CAN BE.

15 Q. WELL, WHEN YOU SAY, QUOTE, "HERE'S SOMETHING YOU DIDN'T  
16 KNOW, LET ME TELL IT TO YOU, AND NOW YOU TELL ME BACK WHAT YOU  
17 THINK, WELL, THAT'S GETTING LESS RELIABLE DATA"?

18 YOU AGREE WITH THAT; CORRECT?

19 A. I THINK GENERALLY IT IS BUT NOT ALWAYS.

20 A SIMPLE EXAMPLE, IF I ASKED YOU, WOULD YOU BE UPSET  
21 TOMORROW IF THE SUN NEVER CAME UP AGAIN? I THINK THAT'S A  
22 PRETTY EASY ONE. I THINK WE WOULD ALL SAY, YES, WE WOULD BE  
23 VERY UPSET, AND I THINK THAT WOULD BE A VERY RELIABLE ANSWER.

24 I MIGHT ASK SOMETHING MORE DIFFICULT FOR YOU TO IMAGINE  
25 AND THAT MIGHT NOT BE RIGHT. I THINK IT DEPENDS.

1 Q. AND YOU'RE TALKING ABOUT YOUR EXPERIENCE DOING SURVEYS,  
2 MOST OF THAT IS WITH SMARTPHONES?

3 A. NO.

4 Q. PRODUCT?

5 A. NO.

6 Q. WHAT'S IT WITH?

7 A. QUITE A LOT. AS I SAID, I'VE BEEN DOING THIS SINCE THE  
8 EARLY '80S. I'VE DONE IT IN MEDICAL RESEARCH, OTHER PRODUCTS,  
9 I'VE PLAYED WITH A NUMBER OF THINGS.

10 Q. OKAY. SO ACROSS THE BOARD, WHEN YOU SAY "HERE'S SOMETHING  
11 YOU DIDN'T KNOW, LET ME TELL IT TO YOU, AND NOW YOU TELL ME  
12 BACK WHAT YOU THINK, THAT'S GETTING LESS RELIABLE DATA THAN  
13 ASKING THEM ABOUT WHAT THEY ALREADY KNOW ABOUT," DO YOU AGREE  
14 WITH THAT?

15 A. I THINK THAT'S TRUE IN MANY SITUATIONS.

16 Q. OKAY. AND IF WE CAN PUT BACK UP THAT DOCUMENT, 133.

17 OH, NO.

18 THE COURT: TIME IS 4:31. IS THIS A QUICK QUESTION?

19 MR. PRICE: YEAH, IF I CAN ASK THAT QUICK QUESTION  
20 ABOUT THE SURVEY THEN.

21 Q. AND WHAT YOU'RE SAYING THE TREND IS SHOWING US IN THE  
22 YEARS, FISCAL YEARS TWO, THREE, FOUR HERE -- I'M SORRY. '12 --  
23 FISCAL YEAR '11, '12, '13, FISCAL YEAR, FOURTH QUARTER.

24 DO YOU SEE THOSE?

25 A. YES.

1 Q. YOU'RE GETTING A LOT OF PEOPLE WHO MAY HAVE LESS KNOWLEDGE  
2 ABOUT THE SMARTPHONES THAN PEOPLE WHO ALREADY OWN SMARTPHONES  
3 THAT ARE COMING INTO THE MARKET; CORRECT?

4 A. NO, I WOULDN'T SAY THAT. THESE ARE PEOPLE WHO NOW OWN A  
5 SMARTPHONE. AND TO SUGGEST THAT SOMEONE WHO OWNS A SMARTPHONE  
6 FOR A SHORT PERIOD OF TIME IS LESS KNOWLEDGEABLE THAN SOMEONE  
7 WHO'S OWNED IT FOR ONE OR TWO YEARS, I WOULDN'T SAY THAT THAT'S  
8 WHAT THIS DATA SAYS.

9 THERE'S NO QUESTION HERE ABOUT THEIR KNOWLEDGE.

10 Q. AND I APOLOGIZE ABOUT --

11 THE COURT: IT IS 4:32.

12 MR. PRICE: I'LL CLARIFY TOMORROW.

13 THE COURT: IT'S TIME TO GO. ACTUALLY, WE'RE NOT  
14 GOING TO BE IN SESSION TOMORROW OR THURSDAY, BUT WE'LL RESUME  
15 ON FRIDAY MORNING AT 9:00 A.M. WITH MR. PRICE'S CROSS OF  
16 MR. SCHILLER.

17 YOU'RE EXCUSED NOW. PLEASE DO NOT RESEARCH OR DISCUSS THE  
18 CASE.

19 AND, MR. DUNHAM, LOTS OF VITAMIN C AND REST.

20 JUROR: I'LL BE FINE.

21 THE COURT: OKAY. THANK YOU. WE'LL SEE YOU ALL ON  
22 FRIDAY MORNING. THANK YOU FOR YOUR PATIENCE AND YOUR SERVICE.

23 IF YOU WOULD PLEASE LEAVE YOUR JURY BINDERS IN THE JURY  
24 DELIBERATION ROOM. THANK YOU.

25 (JURY OUT AT 4:32 P.M.)

1 THE COURT: YOU MAY STEP DOWN.

2 THE RECORD SHOULD REFLECT THE JURORS HAVE LEFT THE  
3 COURTROOM.

4 ARE THERE ANY ISSUES OR SHOULD WE GO AHEAD AND ADJOURN  
5 OURSELVES FOR THE DAY?

6 MS. MAROULIS: NONE FOR SAMSUNG, YOUR HONOR.

7 THE COURT: ALL RIGHT. ANYTHING FOR APPLE?

8 MR. MCELHINNY: NOTHING FOR APPLE, YOUR HONOR.

9 THE COURT: NO? ALL RIGHT. THANK YOU. WE'LL SEE  
10 YOU ON FRIDAY MORNING THEN AT 9:00 O'CLOCK.

11 (PAUSE IN PROCEEDINGS.)

12 MR. MCELHINNY: EXCUSE ME, YOUR HONOR. OUR NEXT  
13 WITNESS IN ORDER IS HERE AND I JUST WANT TO LET HIM SIT IN THE  
14 WITNESS CHAIR AND GET A FEEL FOR IT. IT'LL ONLY TAKE ONE  
15 SECOND.

16 THE COURT: I NEED TO NOTIFY SAMSUNG -- EXCUSE ME.  
17 THERE'S BEEN A REQUEST TO HAVE THE NEXT WITNESS SIT IN THE  
18 CHAIR SO HE CAN KNOW WHAT IT FEELS LIKE. IS THERE ANY  
19 OBJECTION?

20 MR. QUINN: NO.

21 MR. MCELHINNY: THANK YOU.

22 THE COURT: IS HE HERE?

23 MR. MCELHINNY: HE IS HERE. WE'LL GO AHEAD, YOUR  
24 HONOR.

25 THE COURT: ALL RIGHT. I'M GOING TO STAY TO

1 CHAPERONE.

2 MR. MCELHINNY: ALL RIGHT.

3 (PAUSE IN PROCEEDINGS.)

4 MR. MCELHINNY: YOUR HONOR, THIS IS MR. CHRISTIE.

5 HE'LL BE OUR NEXT WITNESS.

6 THE COURT: OKAY.

7 MR. MCELHINNY: YOU'LL HAVE WATER, YOU'LL HAVE YOUR  
8 OWN SET OF BINDERS. BE CAREFUL, DON'T ROLL OFF.

9 (DISCUSSION OFF THE RECORD.)

10 THE WITNESS: THANK YOU VERY MUCH. I APPRECIATE IT.

11 THE COURT: OKAY.

12 (THE EVENING RECESS WAS TAKEN AT 4:35 P.M.)

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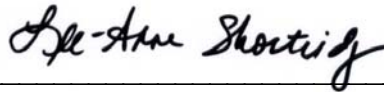
CERTIFICATE OF REPORTERS

WE, THE UNDERSIGNED OFFICIAL COURT REPORTERS OF THE  
UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF  
CALIFORNIA, 280 SOUTH FIRST STREET, SAN JOSE, CALIFORNIA, DO  
HEREBY CERTIFY:

THAT THE FOREGOING TRANSCRIPT, CERTIFICATE INCLUSIVE, IS  
A CORRECT TRANSCRIPT FROM THE RECORD OF PROCEEDINGS IN THE  
ABOVE-ENTITLED MATTER.



IRENE RODRIGUEZ, CSR, CRR  
CERTIFICATE NUMBER 8076



LEE-ANNE SHORTRIDGE, CSR, CRR  
CERTIFICATE NUMBER 9595

DATED: APRIL 1, 2014